

**TENTATIVE AGENDA
MEETING OF THE CITY COUNCIL
CITY OF LADUE, MISSOURI
COUNCIL CHAMBERS
9345 CLAYTON ROAD
LADUE, MISSOURI 63124
MONDAY, NOVEMBER 20, 2017
4:00 P.M.**

The Hon. Nancy Spewak, Mayor, to preside and call the meeting to order.

Adoption and Approval of the Agenda.

Approval of the Minutes: Minutes of the Regular and Closed Meetings of October 16, 2017.

Employee Service Award Presentation – Al Stahl (Public Works)

Public Forum: The Mayor will recognize any visitors who wish to address the Mayor and Council on City matters. **(Speakers will be limited to 3 minutes)**

Public Hearings:

PH1: The City Council will hold a public hearing on a recommendation submitted by the Zoning and Planning Commission that the City Council approves a Special Use Permit for a Communication Antenna in the “C” Residential District. The Antenna is proposed to be installed on an existing pole located at 9551 Litzsinger Road in Tilles Park.

Zoning and Planning Matters:

ZP1: Referral to the Zoning and Planning Commission for a Special Use Permit for Ladue High School Athletic Field.

Old Business:

Bill No. 2165 Amended – An ordinance repealing Chapter 102 Trees and Shrubs in its entirety and replacing it with a new Chapter 102 Trees and Landscaping.

Resolution No. 2017-24 - A resolution amending the City of Ladue Personnel Administration Manual by establishing a policy for Shared Sick Leave.

New Business:

Proposed Legislation:

Bill No. 2167 - An ordinance authorizing the Mayor to execute on behalf of the City of Ladue, Missouri a lease agreement between the City of Ladue, Missouri and DRA Properties, LLC for a portion of the property at Edie's Mulch Site at 9810 South Outer 40 Road.

Bill No. 2168 – An ordinance calling for a regular election to be held in the City of Ladue, St. Louis County, Missouri, on Tuesday, April 3, 2018, and designating the St. Louis County Board of Election Commissioners to conduct such election in compliance with state statute requirements and the revised Missouri election laws.

Bill No. 2169 –An ordinance repealing Chapter 110, Article III entitled ‘Architectural Board’ in its entirety and replacing it with a new Chapter 110, Article III entitled ‘Architectural Review Board’.

Bill No. 2170 - An ordinance approving Rights-of-Way Use Agreements, Settlements, and Releases for Communications Facilities with MCIMetro Access Transmission Services, Corp., MCI Communications Services, Inc., and XO Communications Services, LLC.

Resolution No. 2017-31 – A resolution amending the City of Ladue Personnel Administration Manual "Subject – Organization for Personnel Management" by replacing the existing organizational chart with an updated organizational chart.

Financial Matters:

- F-1** Report of the Finance Director regarding significant items in the financial reports.
- F-2** The Mayor and Council to review and approve the Vouchers for Payment for the month of October 2017.
- F-3** The Mayor and Council to review the combined Treasurer's and Collector's Report for October 2017.
- F-4** The Mayor and Council to review the Financial Report for October 2017.
- F-5** The Mayor and Council to review the Cash Flow Summary for October 2017.
- F-6** The Mayor and Council to review the Land Lots and Delinquent Tax List.

Department Reports:

- D-1 Fire Department:** Mayor and Council to review the Fire Department Activity Report for the month of October 2017.
 - a. Construction Management Report - Fire House No.1.
- D-2 Police Department:** Mayor and Council to review the Police Activity Report for the period of January 1 – October 31, 2017.
- D-3 Public Works:** Mayor and Council to review the report of the Director of the Public Works Department.
 - a. Building Office report for the period through October 2017.
- D-4 Municipal Court:** Mayor and Council to review the report of the Municipal Court for October 2017.
- D-5 Administration/City Clerk:**
 - a. Report from the City Attorney.
- D-6 Committee Appointments:** Request for approval of the appointment of Scot Bollinger as an employee member of the Non-Uniform Pension Board.

Adjournment: Next meeting dates: Monday, December 18, 2017 and January 15, 2018.

Note: Pursuant to Section 610.022 RSMO., the City Council could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMO. and/or personnel matters under section 610.021 (13) RSMO. and/or employee matters under section 610.021 (3) RSMO. and/or real estate matters under section 610.021 (2).

Posted Date:

11/16/17

Time:

3:40pm

By:

JR

BILL NO. 2165 AMENDED

ORDINANCE NO. _____

AN ORDINANCE REPEALING CHAPTER 102 TREES AND SHRUBS IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 102 TREES AND LANDSCAPING.

WHEREAS, the City of Ladue adopted Ordinance 2104 in January 2015 that added Article III to Chapter 102 which established that landscape plan approval is required for new single family homes; and

WHEREAS, the City has been in receipt of feedback regarding the lack of a formal landscape plan review process that specifies landscape plan requirements and review criteria; and

WHEREAS, the City has been in receipt of feedback regarding the tree removal permit process; and

WHEREAS, members of the Building Department staff reviewed Chapter 102 in its entirety and based on the feedback as described above, created an updated Chapter 102; and

WHEREAS, City Council, after careful review, desires to and finds it in the best interests of the community to repeal Chapter 102 and adopt a new Chapter 102; and

WHEREAS, a copy of this bill has been made available for public inspection prior to its consideration by the Council and read by title two times in an open meeting prior to passage.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LADUE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. The City of Ladue hereby repeals existing Chapter 102 of the Ladue Code and enacts a new Chapter 102 in lieu thereof as set out in "Exhibit 1" attached hereto and incorporated herein.

SECTION 2. This Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED THIS _____ DAY OF _____ 2017.

President, City Council

ADOPTED AND APPROVED THIS _____ DAY OF _____ 2017.

Nancy Spewak, Mayor

ATTEST:

Laura A. Rider, City Clerk

Exhibit 1

CHAPTER 102 TREES AND LANDSCAPING

Chapter 102 - TREES AND LANDSCAPING

ARTICLE I. - IN GENERAL

Sec. 102-1. Statement of intent:

The purpose of this ordinance is to:

1. Aid with erosion and storm water control.
2. Mitigation of air pollution.
3. Protection of property values and prevention of safety hazards.
4. Maintain the goals of the Comprehensive Plan of the City of Ladue.

Sec. 102-2. - Sight obstructions at intersections, etc.

- (a) All intersections must have clear visibility on all corners for pedestrians and motorists. There shall be a triangular area formed by measuring 30 feet along the curb lines of both intersecting streets that must be clear from any shrubbery, trees, plants, fences, or other impediments that obstruct the view of motorists and pedestrians. Grass and/or landscaping materials such as flowers and bushes are permitted in this clearance zone, provided that such landscaping materials do not hinder sight distance, become a public nuisance, or exceed 36 inches in height.
- (b) Driveways must have clear visibility for access to the adjoining street. Grass and/or landscaping materials such as flowers and bushes shall be planted in such a manner as to not hinder sight distance or become a public nuisance.
- (c) Tree limbs over sidewalks and streets must be properly maintained to allow pedestrians to walk on sidewalks and vehicles to travel on streets without interference. Shrubs, bushes and other objects shall not project into the sidewalk or street travel area. To ensure safety of motorists and pedestrians, vegetation needs to be maintained to a minimum of eight feet overhanging a sidewalk and 12 feet overhanging the roadway.
- (d) No person owning or occupying a lot in the City shall allow any tree, shrubbery, plant, fence, structure, or other impediment, or any part thereof, to be located within 36 inches of a fire hydrant. It shall also be the duty of such person to ensure that at all times such fire hydrant is clearly visible from any street (public or private).

Sec. 102-3. - Obstruction of pathways and streets.

No person owning or occupying a lot in this City located adjacent to a pathway or street (public or private), shall plant or maintain trees, shrubbery, or any structure which overhangs so as to obstruct said pathway or street (public or private), or any portion thereof used by persons making a normal and common use of the pathway or street (public or private).

Sec. 102-4. - Removal of dead trees and dead tree limbs.

- (a) It shall be the duty of any person owning property in the City, to cut down to ground level all dead or dying trees (including diseased trees) or cut down or remove tree branches or limbs on such property, which by reason of their location, size, or state of deterioration, constitute a danger to the public health, safety, or welfare and remove from the property all parts thereof, except as provided in subsection (b) below.
- (b) Wood from felled trees or from a supplied source, to be used as firewood by the occupant of a property, shall be neatly stacked and stored only in rear or side yards. Trees cut down with the intent to be used as firewood shall be sized to a maximum length of 36 inches with a diameter of not more than 6 inches.
- (c) It shall also be the duty of such persons to remove from such property any trees or limbs that have fallen onto their property, including creeks.
- (d) It shall be strictly prohibited to discard trees, limbs, leaves, and any other vegetative debris on or in any sink hole, waterway, swale, or any other watercourse.

Sec. 102-5—Invasive Species.

No planting shall take place of the following nuisance or invasive plants/trees; see complete list established by Missouri Department of Conservation. This list includes, but is not limited to Honeysuckle species (Bush Honeysuckle, Japanese Honeysuckle) and Bamboo (all types).

Sec. 102-6. Violations

If any person is in violation of the provisions of this Chapter and fails to correct such violations within the timeframe outlined in the written notice issued by the Building Department, the matter will be referred to municipal court for prosecution.

Sec. 102-7. Penalties

Penalties for violation of this Chapter shall be as follows: in addition to any other remedy or penalty that may exist in law or equity, violation on parcel or lot, may be up to \$100.00 each day any violation continues after the notification period as defined by the Building Department.

ARTICLE II. – REMOVAL AND REPLACEMENT OF TREES AND WOODLANDS

Sec. 102-8- Purpose.

The purpose of this article is to protect against the unnecessary and arbitrary destruction and loss of trees and woodlands and, where such loss is necessary, to provide for replacement of trees and woodlands.

Sec. 102-9. - Definitions.

The following words, terms, and phrases, when used in this article and article III, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper: The diameter of a tree trunk measured at 6 inches above the ground for trees up to 4 inch caliper or 12 inches above the ground for trees 4 inch caliper to 12 inch caliper. Typically used to describe the size of nursery stock or recently planted trees. For trees with multiple stems, the caliper of each stem shall be measured and the average of all measurements shall constitute the caliper of the tree. (See definition of "Diameter at Breast Height (DBH)" for measurement of larger trees over 12 inch caliper).

Condition, Existing Trees:

Good Condition – The tree shape and form is average to excellent. The tree has a good main trunk. The branches may be crowded with minor branch dieback. There are few or minor pests, good leaf color and size, and no obvious root or structural problems.

Fair Condition – The tree needs pruning of live or dead branches due to habit, decline, or lack of maintenance. The tree may have pest problems or minor trunk damage, poor branch angle or multi-trunks. There are no obvious structural or hazardous conditions.

Poor Condition – The tree has many dead branches, splitting trunk, and hazardous branches with more than half of the crown dead. The tree may be leaning, have structural problems, or extensive damage from insects or disease.

Dead/Dying Condition – The tree has extensive branch dieback or trunk decay, storm damaged branches, heavy pest problems, or already dead and needing to be removed.

Diameter at Breast Height (DBH): The diameter of a tree trunk at 4.5 feet above ground for trees over 12 caliper inches. For species of trees whose normal growth pattern is characterized by multiple stems the diameter at breast height of each stem shall be measured and the average of all measurements shall constitute the diameter of the tree.

Invasive Species: A plant, fungus, or animal species that is not native to a specific location (an introduced species), and which has a tendency to spread to a degree believed to cause damage to the environment, human economy, or human health. See complete list established by Missouri Department of Conservation.

Landmark Tree: A softwood tree with a diameter breast height (DBH) greater than or equal to 20 inches or a hardwood tree with a diameter breast height (DBH) greater than or equal to 24 inches. Tree must be in good or fair condition, as defined herein, and not be an invasive species as defined by the Missouri Department of Conservation.

Lot: A parcel of land occupied or intended for occupancy for a permitted use.

Three-inch Caliper Equivalency: Sizes for each tree type that is equivalent to a 3 inch caliper tree to satisfy the tree replacement requirement.

- a) Canopy Tree: (1) 3" inch caliper
- b) Small Deciduous Tree: (2) 1-1/2" caliper or (1) 3" caliper
- c) Flowering Tree: 2" single stem, 8' height clump, or 1-1/2" caliper multi-stem
- d) Evergreen tree: 7' height

Woodland: An area of trees that is a low-density forest covering one-quarter acre or more and consisting of trees having a 2 inch or greater caliper.

Section 102-10. City Arborist

The City shall have a certified arborist either on staff or as appointed by the Mayor for the purpose of reviewing tree removal permit applications and tree replacement plans.

Sec. 102-11. – Tree Removal Permit, fee, and replacement requirements—Required.

- (a) No person shall remove, injure, damage, or cause the death of a living tree having a caliper of six or more inches, or clear or cut within a woodland area any trees having a caliper of three inches unless the person has first secured a permit from the City.
- (b) No person shall remove, injure, damage, or cause the death of any living tree or other vegetation from the City's right-of-way unless the person has first secured a permit from the City.
- (c) No person shall remove, injure, damage, or cause the death of any living tree within a stream buffer as outlined in Chapter 110 Article IV
- (d) Tree replacement is required when 25% of the trees are proposed to be removed on the property or when 25% or more of any woodland is proposed to be cleared on the property. If 25% or more of the trees or woodlands on the property are removed, any tree scheduled for removal having a caliper of 6" or more shall be replaced by a tree having at least a 6" caliper or with two (2) 3" caliper equivalent trees. At least half of the replacement trees must be canopy trees from the Approved Tree List.
- (e) The fee for the tree removal permit, for live trees, shall be \$100 to cover the costs incurred for the City Arborist to visit the site, review the plan, and inspect tree replacement. A \$100 deposit will be required prior to issuance of the permit for projects requiring tree replacement.
- (f) In conjunction with issuance of the tree removal permit, the City will provide a tree removal permit card which must be displayed at the property during the tree removal process and shall not be removed until completion of the work.

Section 102-12. – Documentation Requirements – For construction projects subject to Architectural Review Board approval

A tree protection plan, tree chart, and tree survey are required to be submitted to the City for review for all projects subject to Architectural Review Board approval if the project includes tree removal. The documentation of trees on site should include the following:

- (1) Tree chart keyed to a tree survey of all the trees on the site over 6" caliper. Chart must include genus, species, size, and condition, as defined herein
- (2) Identification of woodlands (trees over 3" caliper min) including total number of trees in the woodland, number of trees to be removed, and percentage of tree removal in the woodland
- (3) The overall tree removal percentage for the entire property
- (4) Tree survey to include accurate surveyed location of each tree on the civil survey
- (5) Illustration of the drip line/critical root zone of all existing trees
- (6) Designation of tree status: to be removed or saved
- (7) Purpose or reason for removal: dead/dying, poor condition, in the improvement footprint, etc.
- (8) Photographs of each tree keyed to the tree chart and survey
- (9) Indicated percentage of tree removal
- (10) Indicated Landmark Trees on the tree chart and survey
- (11) Narrative explanation of why a Landmark tree cannot be preserved if it is shown to be removed
- (12) List of trees to be used as replacement trees, with size of trees and enough information to indicate that the replacement requirement is met

Sec. 102-13. – Tree Removal Application – For tree removal not related to an Architectural Review Board construction project

The application for a Tree Removal Permit if Architectural Review Board approval is not required must include the following information:

- (1) Address of the property
- (2) Number of total acres of the property affected
- (3) Name of person making application
- (4) Interest of applicant in property
- (5) Name of the fee owner, if not the applicant
- (6) Number of trees to be removed
- (7) The location of trees to be removed and the location of the trees remaining
- (8) Number of acres/square feet of woodlands to be cleared
- (9) Purpose of removal
- (10) The location of any replacement trees to be planted, with a statement of the number and type
- (11) Photographs showing the property involved and the area where the trees are to be removed
- (12) Label all Landmark trees on the plan
- (13) Narrative explanation of why a Landmark tree cannot be preserved if it is shown to be removed.

Sec. 102-14. – Approval Process

- (a) A completed application for a permit required by this Chapter shall be submitted to the Building Department who shall have the certified City Arborist review the tree removal application for compliance with the tree removal requirements.
- (b) The permit shall not be issued if the City Arborist finds that the tree or woodland removal will substantially increase stormwater drainage on other downstream lots, substantially decrease the quality of a visual or physical buffer, if tree removal is located within a required stream buffer, or substantially and adversely affect the character of the surrounding neighborhood so as to reduce the value of surrounding homes. If such problems will not be created, the City Arborist may issue the permit under the following conditions:
 - (1) Replacement of any removed trees having a caliper of six inches or more by a tree having at least a six-inch caliper. This may be comprised of two (2) three-inch (3") caliper trees or equivalent as defined in Section 102-9.
 - (2) Replacement of each tree in a woodland having a three-inch or greater caliper by a new tree having a three-inch caliper. This may be comprised of two (2) one and one-half-inch (1.5") caliper trees. This shall be required when 25 percent or more of the trees on the lot or within a woodland have been removed or are planned for removal.
 - (3) At least half of the replacement trees must be canopy trees from the Approved Tree List.
- (c) The planting of the trees required under subsection (a) or (b) of this section shall be guaranteed by an escrow approved by the City as determined by the City Arborist. The amount shall be adequate to ensure the completion of the work, including re-plantings.
- (d) If a permit is not issued, the reasons for the denial shall be made in writing and a copy sent to the applicant.
- (e) When no appropriate tree locations are available, a payment of One Hundred Twenty Dollars (\$120.00) per replacement caliper inch may be paid to the City's Tree Fund which shall be utilized for future forestry efforts in the City. This option may reduce the required number of trees on a project by no more than 25 per cent.
- (f) Any party aggrieved by the decision of the City Arborist shall have the right to appeal such decision by filing a notice of appeal with the Zoning Board of Adjustment within thirty days of the decision.

Sec. 102-15. - Exemptions.

- (a) The requirements of this article shall not apply to removal of tree(s) with less than a six-inch caliper in a non-woodland area or removal of a tree with less than a three-inch caliper in a woodland area as long as such removal does not constitute 25 percent or more removal of trees on the property or within the woodland area
- (b) Tree removal shall be considered cumulative when successive tree removal applications are submitted to the City for review.

Sec. 102-16 – Inspections.

For all permits requiring tree replacement, the City Arborist will inspect the property prior to the final approval of the permit and release of the deposit, if any.

Sec. 102-17 – Tree Removal License

All contractors performing tree removal in the City of Ladue shall be licensed through the City in accordance with Section 50-22(6) of the Code of Ordinances. Licensed contractors must be able to provide proof of license at all times while performing work within the City of Ladue.

ARTICLE III – TREE PROTECTION

Sec. 102-18. – Purpose

The purpose of this article is to provide protection to trees during the construction process, which will provide the homeowner and neighbors the ability to enjoy beautiful, healthy trees for many years to come.

Sec. 102-19. – Definitions

Tree Protection Zone (TPZ): The zone around the tree that will be maintained at the original grade and original conditions over the course of the development. This zone is determined by the Critical Root Zone (CRZ) location and must be no less than a 5-foot radius from the trunk per caliper inch or DBH. Tree protection fence must be placed at the perimeter of the TPZ.

Critical Root Zone (CRZ): The zone under the canopy and around the trunk of a tree that contains the tree's root structure and the space above ground within the tree's canopy drip line or beyond. The CRZ can be observed on site and is also estimated to be 1.25 feet for every 1 inch of tree diameter breast height or caliper. The observed or calculated CRZ that is larger will take precedence.

Tree Protection Plan (TPP): Drawings that graphically illustrate the existing trees on the project site, adjacent to the site and in the right-of-way. The TPP will include graphic depictions of the Tree Protection Zones (TPZ)/tree protection fence, Critical Root Zone (CRZ), and locations of tree protection measures (such as root pruning, aeration, etc.) to protect trees during construction or other site

disruptions. A written description of tree protection measures must also be included on the drawing. Required elements of the TPP can be included on the Landscape Plan or submitted as a separate plan.

Sec. 102-20. – Tree Protection Requirements

- (a) Contractor shall stake clearing limits to coordinate the locations for tree protection measures and tree protection fencing installation.
- (b) Contractor shall build and maintain temporary fences of brightly-colored plastic tree protection fencing and signage so that construction workers can clearly see zones from where equipment must be kept clear. Signage will indicate “DO NOT ENTER”, “DO NOT REMOVE,” or other messages that communicate the importance of the tree protection fencing. Tree protection fence must be maintained at all times. It cannot be removed at any time during the construction. Upon completion of construction, all barriers, fencing, and debris shall be removed from the site by the contractor.
- (c) No clearing or grading shall begin in any area of construction site where tree preservation measures have not been completed.
- (d) No construction equipment can be operated within Tree Protection Zone (TPZ) of the trees that are to be protected. Access to fenced preservation areas by construction equipment, materials, or individuals that may cause harm to protected trees is prohibited.
- (e) Contractor will be prohibited from cutting into tree’s roots, compacting the soil over roots, or changing the ground level around the tree during construction. Root pruning, a tree protection measure, must be completed by qualified experts (Forester or Arborist) prior to any construction.
- (f) Attachment of any signage or fencing to any tree is strictly prohibited.

ARTICLE IV. - LANDSCAPE REVIEW

Sec. 102-21. - Purpose.

The purpose of this article is to provide regulations for the review and approval of landscape design and plant selections for permitted building projects involving new main buildings and any project that disturbs more than one acre within the City of Ladue to:

- (1) Enhance the beauty, livability, and prosperity of the community;
- (2) Encourage originality, creativity, and diversity in design and to avoid monotony;
- (3) Preserve greenspace by requiring the preservation/replacement of existing trees and enhanced landscape;
- (4) Maintain and promote tree canopy coverage;
- (5) Provide a transition between adjacent lots;
- (6) Complement and enhance the landscape of the surrounding neighborhood;

- (7) Soften the appearance of structures and equipment;
- (8) Control erosion and protect water quality; and
- (9) Strategically control flooding through the use of plantings (such as rain gardens)

Sec. 102-22. – Landscape design principles

- 1 Landscaping shall, whenever possible, create and preserve visual buffer zones between neighboring properties.
- 2 Landscaping shall be located to screen and soften air conditioning units, pool equipment, driveway pads, retaining walls, blank facades, and other poor views from neighbors.
- 3 The landscape plan shall consider the entire property, including front, side, and rear yards.
- 4 Plantings should meet commercial landscape size, quality, and spacing standards
- 5 Landscape designs should incorporate and enhance existing natural landscapes and existing trees.
- 6 Residents should choose a type of landscaping design preference (i.e. naturalistic vs. formal, etc.) and be consistent with the chosen design.
- 7 Landscaping shall be chosen to provide a variety of colors, textures, and sizes.
- 8 Landscape designs should be compatible with and enhance the architectural character and features of the buildings on site, and help relate the building to the surrounding landscape.
- 9 Plantings shall not be invasive species, as defined by the Missouri Department of Conservation.

Sec. 102-23. – Landscape Plan Requirements for Residential lots.

A review and approval by a Missouri licensed landscape architect retained by the City of Ladue will be required for any new main building.

- 1 Landscaping shall be reviewed according to the following:
 - a. Each residential property is required to maintain a minimum percentage of green space according to Section V (G)(1) of the Zoning Ordinance. Required green space shall consist of undisturbed natural areas, lawn, planting beds, gardens, and water features including rain gardens and ponds, but not including pools.
 - b. Compliance with landscape design principals specified in Section 102.23
 - c. All yards bordering on streets, both public and private, shall be required to install at least one (1) canopy tree for every 100 feet of street frontage unless this frontage is occupied by existing trees in good or fair condition, as defined herein. This shall be applied to side and rear yards, whenever applicable as determined by the Missouri licensed landscape architect.
 - d. At least one tree shall be required for every one thousand (1,000) square feet of lot coverage for a residential development. If the required number and size of trees already exist on the site, the applicant shall not be required to plant additional trees, but will be required to maintain the existing trees.

- e. Required landscaping shall be maintained in good growing condition. Whenever necessary, plantings shall be replaced with other plant materials to ensure continued compliance with landscaping requirements.
 - f. Trees that can reach a height of 25 feet shall not be planted within 15 feet of overhead utility lines.
 - g. Areas that consist primarily of invasive species as defined by Section 102-7 shall not count toward the minimum required green space.
2. Quality landscaping materials shall be installed at an appropriate spacing (density) and the following minimum size:
- a. Canopy trees – 3" caliper minimum
 - b. Small deciduous trees – 2.5" caliper minimum
 - c. Flowering trees – 2" single stem, 8' feet tall clump, or 1.5" caliper multi-stem minimum
 - d. Evergreen trees – 7' height minimum
 - e. Shrubs – 24" height minimum
 - f. Perennials – 1 gallon minimum
 - g. Groundcover – 1 quart minimum
3. Trees shall be selected from the approved Ladue Tree list (list available in the Building Department)
4. Invasive plants shall be prohibited. At least 25% of trees should be selected from the Missouri Native Plant List (copies available online or in the Building Department).

Section 102-24 – Landscape Plan Application Requirements for New Main Buildings

1. Landscape plan must be prepared by a licensed landscape architect, arborist, or urban forester.
2. A fee of \$500 will be assessed and applied towards the cost of the landscape architect review. Any difference between actual cost of review and fee paid by owner or developer shall be applied as an adjustment to the building permit fee.
3. The submittal should be accompanied by a written narrative that describes how application requirements and/or subsequent review comments have been addressed with an indication of where to find this information in the submittal.
4. The Landscape Review submittal should include the following:
 - a. Context aerial image, such as imagery available from GIS, of the project site

- b. Photographs of key existing conditions and context photos of the front elevations of the homes on either side of the home and across the street
 - c. Full-size, to-scale drawings including topographic survey, grading plan and utilities, and architectural drawings
 - d. Drawing preparation and revision dates on each drawing submission
 - e. Tree Preservation Plan (TPP) to illustrate tree removal and preservation plan to meet all other requirements of this Chapter
 - f. Landscape plan for the entire new home and site improvements drawn over the civil grading plan to show:
 - i. North arrow and scale
 - ii. Existing and proposed contours
 - iii. Existing and proposed utilities
 - iv. Existing and proposed tree locations
 - v. Tree removal
 - vi. New trees and other plantings
 - vii. Plant labels and quantities
 - viii. Plant list with genus/species, common name, installed size, container or B&B, and spacing
 - ix. Tree and planting details
 - x. Labels and illustrations regarding materials used for hardscapes, including sidewalks, driveways, patios, walls, and other features.
5. Any party aggrieved by the decision of the City's Landscape Architect shall have the right to appeal such decision by filing a notice of appeal with the Zoning Board of Adjustment within thirty days of the decision.

CITY OF LADUE APPROVED TREE LIST

Canopy Trees

Botanical Name	Common Name
<i>Acer platanoides</i>	Norway Maple
<i>Acer rubrum</i>	Red Maple (Missouri native)
<i>Acer saccharum</i>	Sugar Maple (Missouri native)
<i>Acer truncatum</i>	Shantung Maple
<i>Aesculus spp</i>	Horsechestnut
<i>Alnus spp</i>	Alder
<i>Betula nigra</i>	River Birch (Missouri native)
<i>Carpinus betulus</i>	European Hornbeam
<i>Carpinus caroliniana</i>	American Hornbeam (Missouri native)
<i>Carya spp</i>	Hickory
<i>Carya ovata</i>	Shagbark Hickory (Missouri native)
<i>Castanea spp</i>	Chestnut
<i>Celtis spp</i>	Hackberry (Missouri native)
<i>Cercidiphyllum japonicum</i>	Katsuratree
<i>Cladrastis kentukea</i> (C. lutea)	American Yellowwood (Missouri native)
<i>Cotinus obovatus</i>	American Smoke Tree (Missouri native)
<i>Fagus spp</i>	Beech
<i>Ginkgo biloba</i>	Ginkgo (male only)
<i>Gleditsia triacanthos</i> var. <i>inermis</i>	Thornless Honey locust
<i>Gymnocladus dioica</i>	Kentucky Coffeetree (Missouri native)
<i>Liriodendron tulipifera</i>	Tulip poplar (Missouri native)
<i>Magnolia acuminata</i>	Cucumber Tree Magnolia (Missouri native)
<i>Magnolia macrophylla</i>	Bigleaf Magnolia
<i>Metasequoia glyptostroboides</i>	Dawn Redwood
<i>Nyssa sylvatica</i>	Black Gum (Missouri native)
<i>Ostrya virginiana</i>	American Hophornbeam
<i>Platanus x acerfolia</i>	London Planetree
<i>Platanus occidentalis</i>	American Sycamore (Missouri native)
<i>Quercus alba</i>	White Oak (Missouri native)
<i>Quercus bicolor</i>	Swamp White Oak (Missouri native)

<i>Quercus borealis</i>	Red Oak (Missouri native)
<i>Quercus coccinea</i>	Scarlet Oak
<i>Quercus imbricaria</i>	Shingle Oak (Missouri native)
<i>Quercus macrocarpa</i>	Bur Oak (Missouri native)
<i>Quercus muehlenbergii</i>	Chinkapin Oak (Missouri native)
<i>Quercus palustris</i>	Pin Oak (Missouri native)
<i>Quercus phellos</i>	Willow Oak (Missouri native)
<i>Quercus robur</i>	English Oak
<i>Quercus shumardii</i>	Shumard Oak (Missouri native)
<i>Quercus stellata</i>	Post Oak (Missouri native)
<i>Quercus velutina</i>	Black Oak
<i>Sophora japonica</i>	Japanese Pagoda Tree
<i>Taxodium distichum</i>	Bald Cypress (Missouri native)
<i>Tilia americana</i>	American Linden (Missouri native)
<i>Ulmus 'Homestead'</i>	Homestead Elm
<i>Ulmus parvifolia</i>	Chinese Elm
<i>Zelkova serrata</i>	Japanese Zelkova

Small Deciduous Trees

Botanical Name	Common Name
<i>Acer buergerianum</i>	Trident Maple
<i>Acer campestre</i>	Hedge Maple
<i>Acer japonicum</i>	Full Moon Maple
<i>Acer palmatum</i>	Japanese Maple
<i>Acer pensylvanicum</i>	Striped Maple
<i>Asminia triloba</i>	Pawpaw (Missouri native)
<i>Carpinus betulus 'Fastigiata'</i>	Fastigate European Hornbeam
<i>Carpinus betulus 'Columnaris'</i>	Columnar European Hornbeam
<i>Carpinus caroliniana</i>	American Hornbeam/Ironwood
<i>Sassafras albidum</i>	Common Sassafras (Missouri native)

Flowering Trees

Botanical Name	Common Name
Amelanchier spp	Serviceberry (Missouri native)
Cercis canadensis	Eastern redbud (Missouri native)
Cercis spp	Redbud
Chionanthus virginicus	White Fringetree (Missouri native)
Cornus florida	Flowering dogwood (Missouri native)
Cornus spp	Dogwood
Cotinus obovatus	American Smoketree (Missouri native)
Crataegus crusgalli var. inermis	Thornless Hawthorn (Missouri native)
Crataegus mollis	Downy Hawthorn (Missouri native)
Crataegus phaenopyrum	Washington Hawthorn (Missouri native)
Crataegus spp (species with thorns)	English Hawthorn (only in non-pedestrian areas due to thorns)
Crataegus viridis	Green Hawthorn (Missouri native)
Koelreuteria paniculata	Goldenrain Tree
Magnolia stellate	Star magnolia
Magnolia virginiana	Sweet Bay Magnolia
Magnolia x loebneri	Loebner Magnolia
Magnolia x soulangiana	Saucer magnolia
Malus spp	Flowering Crabapples
Prunus spp	Flowering Cherry
Syringa reticulata	Japanese Tree Lilac
Viburnum prunifolium	Blackhaw Viburnum (Missouri native)

Evergreen and Broadleaf Evergreen Trees

Botanical Name	Common Name
Abies spp	Fir
Chamaecyparis spp	Falsecypress
Ilex opaca	American Holly (Missouri native)

<i>Juniperus virginiana</i>	Eastern Red Cedar (Missouri Native)
<i>Juniperus virginiana</i> 'Canaertii'	Canaerti Juniper
<i>Larix</i> spp	Larch
<i>Magnolia grandiflora</i>	Southern Magnolia
<i>Metasequoia glyptostroboides</i>	Dawn Redwood
<i>Picea</i> spp	Spruce
<i>Pinus</i> spp	Pine
<i>Pinus echinata</i>	Short-leaf Pine (Missouri Native)
<i>Pseudotsuga menziesii</i>	Douglas Fir
<i>Thuja occidentalis</i>	American Arborvitae
<i>Thuja orientalis</i>	Oriental Arborvitae
<i>Tsuga canadensis</i>	Canada Hemlock

Small Evergreens

Botanical Name	Common Name
Arborvitae spp	Arborvitae
<i>Ilex x attenuata</i> 'Fosters #2'	Foster's Holly
<i>Juniperus chinensis</i> varieties	Upright Juniper
<i>Juniperus scopulorum</i> varieties	Upright Juniper

RESOLUTION NO. 2017-24

A RESOLUTION AMENDING THE CITY OF LADUE PERSONNEL ADMINISTRATION MANUAL BY ESTABLISHING A POLICY FOR SHARED SICK LEAVE.

WHEREAS, the City of Ladue previously adopted a Personnel Administration Manual; and

WHEREAS, from time to time the policies, procedures and guidelines contained in the manual may be amended or rescinded, or new policies, procedures and guidelines may be added; and

WHEREAS, the City of Ladue recognizes the need for and supports a shared sick leave program;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby amends the Personnel Administration Manual by adding a policy for Shared Sick Leave which shall read as follows:

SUBJECT: SHARED SICK LEAVE

POLICY: The City of Ladue recognizes the need for and supports a shared sick leave program. As authorized by the City Council, the City has established the Leave Share program to allow employees to donate eligible sick leave to a leave share pool. Leave hours may be awarded from the leave share pool to an employee when the employee, or a member of the employee's immediate family, have suffered a catastrophic illness or injury.

DEFINITIONS

Eligible Recipient – employees who hold a position of a permanent or continuing nature, who have completed their original probationary period, who have met a minimum work performance rating of 'successful' and have not been subject to any disciplinary actions for the previous twelve month period or in the applicant's most recent performance review.

Immediate Family Member – an employee's spouse and/or child(ren).

Leave Share Pool – repository of eligible leave hours that is maintained for future awards of donated sick leave to Eligible Recipients.

Medical Emergency – a major illness or other medical condition (e.g., heart attack, cancer, etc.) that requires a prolonged absence from work, including intermittent absences that are related to the same illness or condition.

PROGRAM ELIGIBILITY GUIDELINES:

An Eligible Employee or a member of the Eligible Employee's Immediate Family must have suffered a medical emergency as defined herein.

The Eligible Employee must have exhausted all accrued vacation leave, sick leave, and compensatory time before becoming eligible.

The Eligible Employee must have exhausted all applicable indemnity payments from worker's compensation before becoming eligible.

An Eligible Employee cannot receive leave share while eligible to receive benefits for long-term disability.

APPLICATION

Employees are encouraged to apply for leave share as soon as possible after they anticipate a need in order to avoid a delay in benefits if determined eligible.

An Eligible Employee or designated representative may submit a request to receive donated sick leave from the Leave Share Pool by completing and submitting the required documentation including:

Completed Leave Share Application form

Physician's Statement including a description of the employee's or Immediate Family Member's illness or injury, along with a diagnosis and prognosis.

The required documentation should be submitted to the employee's supervisor.

The employee's supervisor shall review the application, provide comments (optional), sign, date, and forward the documentation to the Assistant to the Mayor/City Clerk or designee.

Information received by email or facsimile will be accepted.

The Assistant to the Mayor/City Clerk or designee will determine whether or not the applicant has exhausted all accrued vacation leave, sick leave, compensatory time, other benefits, and is eligible for consideration.

APPROVAL

If the eligible employee has completed the application, provided a satisfactory Physician's Statement, been submitted by the employee's supervisor, and been determined to be eligible by the Assistant to the Mayor/City Clerk, then the Assistant to the Mayor/City Clerk shall award the employee up to 160 hours of leave for which he/she would otherwise be without pay including holidays. The Assistant to the Mayor/City Clerk may determine the actual number of hours to be awarded based on the Eligible Employee's needs and the availability of pooled hours.

Eligibility for additional increments of 160 hours may be based on current medical certification of the continuing disability.

No additional documentation shall necessarily be required to receive an additional 160 hours, however, the Assistant to the Mayor/City Clerk may require additional or renewed information or certification when in the opinion of the Assistant to the Mayor/City Clerk such is warranted.

The maximum amount of shared sick leave that may be awarded to an employee is 960 hours.

In no event shall hours from the Shared Leave Pool be awarded in such a way as to make the employee eligible for overtime pay or compensatory time.

Allocations are made on a first come first served basis, based on the original date of approval by the Assistant to the Mayor/City Clerk. In the event that there are not sufficient shared sick leave hours available, the Assistant to the Mayor/City Clerk may grant less than 160 hours. This policy does not provide for "borrowing" against future donations.

Payment of the donated leave will be based on the recipient's established rate of pay; however, this rate may be changed due to any pay increases which occur during periods of donated leave.

Only the amount of leave which has been projected as necessary to cover each pay period will be transferred at any given time.

The Assistant to the Mayor/City Clerk will review whether a recipient remains an Eligible Employee before each new allocation of share leave.

The employee need not use shared sick leave hours for paid holidays. The employee will continue to accrue sick leave and vacation time while using shared sick leave to the extent otherwise allowed for regular sick leave. Any leave time so accrued, or leave time accrued by other means, must first be used before shared sick leave may be used.

Leave share hours may be applied retroactively to the two complete pay periods immediately preceding approval of an applicant's leave share application. (e.g. Hours awarded to an application approved on a Tuesday, March 8 could be applied to pay periods from February 1 to 15, February 16 to 28, March 1 to 15 and any subsequent pay periods).

If an award of more leave share hours than the recipient uses is granted, the unused hours are returned to the Leave Share Pool.

LEAVE SHARE DONATION GUIDELINES:

Employees who hold a position of a permanent or continuing nature and who have completed their original probationary period and have at least 160 hours of accumulated sick leave shall be eligible to donate accumulated sick leave to the Leave Share Pool.

Donations must be in increments of one hour.

Donors may not designate specific employees to receive their donations.

Donors may not subsequently rescind their donations.

Donation of sick leave hours is voluntary.

Recipients of leave share awards are not required to donate at a later date to the Leave Share Pool.

No employee may intimidate, threaten, or coerce any other employee with respect to donating or receiving leave under this program.

Donation minimum- 1 hour

Donation maximum- no employee may donate sick leave such that that employee's sick leave balance would be reduced below 160 hours.

Employees cannot borrow against future sick/personal time to donate.

Employees who are currently on an approved leave of absence cannot donate sick time.

The names of employees' who have donated sick leave, and the amount of any donation, shall be considered a personnel record and shall not be released without the consent of the donor, unless otherwise required by law.

IRS COMPLIANCE

This policy is intended to comply with rules and rulings of the Internal Revenue Service such that any donated leave actually used is chargeable to the receiving employee, and not the donating employee, as income. In the event that the IRS changes any existing rule or ruling or adopts any new rule or ruling which would cause the donating employee to treat the donated time as income, the Mayor is authorized to amend any portion of this policy so as to effectuate the intent stated.

Section 2. This Resolution shall take effect and be in force from and after its passage and approval by the Mayor.

Adopted by the City Council and approved by the Mayor on this ____ day of _____, 2017.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

BILL NO. 2167

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF LADUE, MISSOURI A LEASE AGREEMENT BETWEEN THE CITY OF LADUE, MISSOURI AND DRA PROPERTIES, LLC FOR A PORTION OF THE PROPERTY AT EDIE'S MULCH SITE AT 9810 SOUTH OUTER 40 ROAD.

WHEREAS, the City Council is aware of the need for improved cellular communication service in areas of the City of Ladue; and

WHEREAS, a location on a portion of the City owned property at Edie's Mulch Site at 9810 South Outer 40 Road was identified as an ideal location for a Telecommunications Tower; and

WHEREAS, on February 6, 2017, the Zoning Board of Adjustment granted variances for the height of the Telecommunication Tower, the height differential between the top of the Telecommunication Tower and the surrounding trees, the material of the proposed fence and the requirement for where cellular facilities in residential zoning districts can be located; and

WHEREAS, on February 22, 2017, the Zoning and Planning Commission recommended approval of a Special Use Permit with conditions for the Telecommunications Tower to the City Council; and

WHEREAS, on March 27, 2017, the City Council approved a Special Use Permit with conditions including the execution of a lease agreement between the City of Ladue and DRA Properties, LLC; and

WHEREAS, the City Attorney and City Staff worked with DRA Properties, LLC to negotiate the terms of the lease agreement; and

WHEREAS, it has been determined that the passage of this bill is in the best interests of the City of Ladue to enhance cellular communication service for the safety and welfare of the residents and those traveling through the City; and

WHEREAS, a copy of this bill has been made available for public inspection prior to its consideration by the Council and read by title two times in an open meeting prior to passage.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute on behalf of the City the Lease Agreement, between the City of Ladue and DRA Properties, LLC to lease a portion of the property at Edie's Mulch Site at 9810 South Outer 40 Road for a Telecommunications Tower, in substantially the form of Exhibit A incorporated herein by reference.

Section 2. This Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

PASSED THIS ____ DAY OF _____, 2017.

President, City Council

APPROVED AND ADOPTED THIS ____ DAY OF _____, 2017.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

Exhibit A

Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into as of the ____ day of November 2017, by and between THE CITY OF LADUE, MISSOURI, a Missouri municipal corporation ("Landlord" or "City"), and DRA PROPERTIES, LLC, a Missouri Limited Liability Company ("Tenant").

RECITALS:

A. Landlord owns that certain real property commonly known as 9810 Outer 40 Road, Ladue, Missouri and legally described on Exhibit A ("Property") attached hereto and incorporated herein by this reference and, which is used by the City as its mulch site ("Mulch Site") located on the Property.

B. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, a portion of the Property, in an area close to the entrance gate of the Mulch Site, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. PREMISES

Landlord leases to Tenant, and Tenant leases from Landlord, a lease area not to exceed 2,500 square feet of space on the Property as more particularly shown on the survey attached hereto as Exhibit B and incorporated herein by this reference (the "Premises"), in accordance with the terms of this Lease.

2. USE

2.1. Tenant may, subject to restrictions of this Lease and the covenant to keep the cell tower disguised as a monopole pine tree cell tower as approved on the Special Use Permit, attached hereto and incorporated herein as Exhibit C, use the Premises for the purpose of installing, constructing, maintaining, repairing, operating, inspecting, adding to, and removing Tenant's communications equipment, in accordance with and including, but not limited to, the following:

2.1.1. Any and all antenna(s), dishes(es) and/or grids as Tenant may deem appropriate, provided that such equipment shall be concealed from view within the monopole pine tree cell tower as shown on Exhibit C.

2.1.2. Transmission lines and mounting and grounding hardware, provided such is screened from view within the Mulch Site by fencing as required on Exhibit C.

2.1.3. Cabinets or equipment shelter to house portions of Tenant's communication equipment and telecommunications equipment consisting of base station(s), wireless communication equipment, switch(es), power supply(ies), battery(ies), and accessories, provided such is screened from view from outside the Mulch Site by fencing as required on Exhibit C.

2.1.4. At Tenant's option, a back-up power source, including portable generators for temporary use in the event of an emergency, provided such is screened from view from outside the Mulch Site by fencing as required on Exhibit C.

2.2. For the purposes of this Lease, the monopole pine tree cell tower and all of Tenant's equipment, antennas, dishes, lines, switches, power supplies, batteries, accessories, and necessary appurtenances will be referred to herein collectively as the

“Communications Facility”. Installation of all or any portion of the Communications Facility which will be located within the Premises is within the discretion of Tenant provided that the Communications Facility or Tenant’s use of the Premises complies with Exhibit C and does not adversely affect the operation of the Mulch Site or interfere with any other operation of the City.

2.4. The Communications Facility may be installed by Tenant or by any of Tenant’s agents or contractors. Tenant represents and warrants to Landlord that the Communication Facility will be operated, managed, and maintained in compliance with all applicable federal, state, and local laws, rules, regulations, and orders.

2.5. The right hereby granted to Tenant to use and occupy the Premises is non-exclusive, and the City reserves the right to grant a similar or dissimilar right or privilege on the Property outside of the Premises to any person for any purpose at any time during the term of this Lease, provided that such grant shall not terminate this Lease or interfere with Tenant’s use of the Premises and such use was unable to be accommodated in Tenant’s Premises.

2.6. The City hereby reserves the right to use the Mulch Site for such other municipal purposes as the City deems necessary, provided that such right to use the Mulch Site for other municipal purposes shall exclude the Premises, except to the extent permitted in Section 2.5 above. If such change in use occurs, all provisions hereof protecting the City’s Mulch Site use will also apply to such changed use. If such change in use causes interference with Tenant’s use of the Premises, the City and Tenant shall use reasonable good faith efforts to eliminate said interference, provided that in the event the City and Tenant are unable to eliminate said interference, Tenant may terminate this Lease.

2.7. Tenant shall have the right to modify, supplement, replace, or upgrade the Communication Facility within the Premises at any time during the term of this Lease, consistent with the design, location/elevation, size, and orientation for equipment as approved on the attached exhibits of this Lease; provided, however, that any such modification, supplement, replacement, or upgrade shall first be reviewed by Landlord for Landlord to determine and approve that such complies with the terms of this Lease and applicable codes, such approval not to be unreasonably withheld, conditioned, or denied. Review and approval by Landlord may be shown on the building permit.

3. INITIAL TERM & RENEWAL TERM

The term (“Term”) of this Lease shall be for fifteen (15) years commencing on the date that all of the contingencies set forth in Section 22 hereof have been satisfied or waived by Tenant (“Lease Commencement Date”) and ending at 11:59 p.m. on the day immediately prior to the fifteenth (15th) anniversary of the “Rent Commencement Date” (defined below) unless sooner terminated pursuant to any provision hereof. On or before the Lease Commencement Date, Landlord and Tenant shall execute a Memorandum of Lease including a blank for the Lease Commencement Date and the date of expiration of the Term, and Tenant shall be authorized to add the Commencement Date and the expiration date of the Term to the Memorandum of Lease when its contingencies have been satisfied or waived and thereafter record that Memorandum of Lease in accordance with Section 25. At the end of the initial Term, this Lease shall automatically extend another fifteen (15) years unless Tenant terminates Lease pursuant to Paragraph 10 below. Tenant shall pay \$5,000 to the City at the time of the extension.

4. RENT

4.1. During the term of this Lease, Tenant agrees to pay Landlord the annual rent

("Rent") in the amounts set forth on Exhibit D attached hereto and incorporated herein by this reference; Tenant's Rent shall not commence until thirty (30) days after the Tenant's first subtenant, Verizon Wireless, attaches antennas to tower or places equipment on the ground, whichever occurs first "Rent Commencement Date". Thereafter, Tenant shall pay Rent in advance beginning on the Rent Commencement Date of each succeeding Lease year. In addition, Tenant shall increase the Rent by \$6,000 for each subtenant, not including subtenant Verizon permitted herein, that enters into a lease agreement for tower space from Lessee to add equipment within the Premises. Tenant shall pay the increased Rent for each subtenant on a yearly basis prorated for the first year if such subtenant agreement commences in the middle of a rental year, and thereafter pay such Rent increase at the same time Rent is due. Rent shall be paid to Landlord at its address designated in Section 9. Rent for any period during the term of this Lease that is less than one (1) year will be prorated based on a three hundred sixty-five (365) day period. Any amount not paid when due shall also bear interest at a rate of one and a half percent (1.5%) per month of the total amount past due until paid.

4.2. Tenant shall, upon submission to Landlord of the executed Lease, pay Landlord, in addition to any amount owed for Rent, the sum of \$2,500.00 to compensate the City for its legal, engineering, and/or other costs associated with the negotiation and execution of this Lease. Such costs shall be in addition to any required permitting or inspection obligations or fees otherwise required.

5. ACCESS

Landlord grants to Tenant, for use by Tenant, its employees, agents, contractors, and by contracted utility companies, access to the Premises on a twenty-four (24) hour daily basis. Tenant shall install a keypad lock system on the gate to the Property, at its sole cost and expense, and shall provide Landlord the code. Tenant is authorized to provide only its subtenants, its employees, agents, contractors, and contracted utility companies the code. Such system shall not null or negatively affect the City's remote-control system so that the City can continue to open the gate through remote-control access.

6. NON-INTERFERENCE

In exercising its rights hereunder, in no event shall Tenant interfere with Landlord's use and enjoyment of the Property as a Mulch Site or other municipal use. Landlord reserves the right, privilege, and authority to continue to use and occupy the Property as a Mulch Site or other municipal use. Tenant accepts the Lease with the reservation in this Section and agrees that if Landlord's public use or public occupancy interferes with Tenant's Use, Tenant & Landlord will use good faith efforts to resolve the interference. Tenant agrees to modify shape and size of Premises to accommodate Landlord if such modification does not require relocation of existing equipment or a reduction in the size of the Premises.

7. UTILITIES

Tenant will be solely responsible for and promptly pay all charges for electricity or any other utility used or consumed by Tenant on the Premises. Tenant will have a meter installed at the Premises for Tenant's utility use, and the cost of such meter and of installation, maintenance, and repair thereof will be paid for by Tenant. Tenant, at Tenant's expense, may install or improve existing utilities servicing the Communications Facility and may install an electrical grounding system or improve any existing electrical grounding system to provide the greatest possible protection from lightning damage to the Communications Facility. All changes or improvements of this kind are subject to the requirements of Section 2 above and must be in accordance with City Codes.

8. MAINTENANCE

Tenant, at Tenant's expense, will be responsible for maintaining the Premises, lock system on the gate to the Property, and Communications Facility. Landlord, at Landlord's expense, shall maintain the gate to the Mulch Site and access road to the same, provided that in the event Tenant damages the Mulch Site, access gate, or access road, Tenant shall repair the damage or, at Landlord's option, reimburse Landlord for the reasonable actual and documented costs and expenses incurred by Landlord to repair the damage.

9. NOTICE

All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the applicable party as follows:

Landlord: City of Ladue
9345 Clayton Road
St. Louis, Missouri 63124-1587
Attention: Mayor and City Clerk

Tenant: DRA Properties, LLC
144 West Lockwood Avenue, Suite 200
Webster Groves, MO 63119
RE: S 40 Drive Ladue Mulch
Attn: Douglas K. Dolan
Phone # (314) 963-7710

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

10. TERMINATION

10.1. Tenant has the right to terminate this Lease at any time upon any of the following events:

10.1.1. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Communications Facility is revoked;

10.1.2. If Tenant determines that the Premises are not appropriate for locating the Communications Facility for technological reasons, including, but not limited to, signal interference; or

10.1.3. If Landlord revokes Tenant's special use permit (Exhibit C) due to non-compliance.

10.2. Tenant will give Landlord thirty (30) days written notice of termination of this Lease under the terms of Sections 10.1.1., 10.1.2., and 10.1.3 above. Upon termination, neither party will owe any further obligations under this Lease except for the indemnities and hold harmless provisions in this Lease, the provisions of Sections 11 and 18 of this Lease, and the prompt reimbursement of pro-rata pre-paid Rent.

11. REMOVAL AND RESTORATION

Upon termination of the Lease for any reason, Tenant shall remove all of the Communications Facility to 3' below grade from the Premises and restore the Premises to its condition as of the Commencement Date of this Lease, as near as practicable.

If the Communications Facility shall no longer be used for communication purposes for any reason, Tenant shall dismantle and remove the Communications Facility at Tenant's sole cost and expense. Upon request of Landlord, Tenant shall provide Landlord with a copy of the notice to the Federal Communications Commission of intent to cease operations on the Premises and shall have ninety (90) days from cessation of operations to complete the dismantling and removal of the Communications Facility.

If the Communications Facility is not removed as provided above, the City reserves the right at any time thereafter and after giving thirty (30) days written notice to the interested parties, to enter the Premises and remove the Communications Facility, and to charge the costs to the last lessee, licensee, or user thereof.

12. DEFAULT

If Tenant fails to comply with any material provision of this Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof from Landlord, Landlord may, at its option, terminate this Lease without affecting its right to sue for all past due Rentals and any other damages to which Landlord may be entitled. If any such default cannot reasonably be cured within thirty (30) days, Tenant will not be deemed to be in default under this Lease if Tenant commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion. If Landlord is entitled to collect or otherwise remedy said damages, and if Landlord seeks enforcement of its rights through an attorney or other legal procedures, Landlord is entitled to collect, in addition to any other amounts owed, its reasonable costs and attorneys' fees thereby incurred.

The rights and remedies stated in this Lease are not exclusive and both parties, in the event of a breach of this Lease or a dispute, are entitled to pursue any of the remedies provided in this Lease, by law, or by equity; provided nothing in this Lease shall waive the City's sovereign immunity or permit damages against the City.

No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Lease will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as the waiver of any subsequent default, and no express waiver will affect any term or condition other than the one specified in such waiver and the express waiver will apply only for the time and manner specifically stated.

13. TAXES

If Landlord receives a real estate or personal tax bill attributed to Tenant's Communications Facility, Tenant shall be liable for such taxes owed.

14. INDEMNIFICATION AND INSURANCE

14.1. Indemnification and Insurance of Tenant. It is understood and agreed that the City requires that it be fully indemnified and held harmless from any loss of any kind that might arise from its entry into this Lease. The provisions set out below concerning insurance required of the Tenant are intended, to the extent the policies may be applicable, to provide funds for such protection, but the Tenant may obtain whatever additional insurance it feels may be necessary or helpful to fully protect the City.

14.1.1 Indemnification. To the fullest extent permitted by law, Tenant shall indemnify, defend, and hold harmless the City and its elected and appointed officials, its boards, commissions, employees, agents, and contractors from any and all injury, claim, demand, judgment, liability or damage, and costs, including attorneys' fees, arising out of or resulting from any act, omission, or negligence by Tenant or its officers, boards, commissions, employees,

agents, or contractors in the construction, operation, maintenance, or removal of the Communications Facility under this Lease or for breach of any material term of this Lease. Any party seeking indemnification hereunder ("Indemnatee") shall promptly notify Tenant of the nature and amount of such claim and the method and means proposed by the Indemnatee for defending and satisfying such claim. The Indemnatee shall consult with Tenant respecting the defense and satisfaction of such claim, including the selection of and directions to legal counsel, and the Indemnatee shall not pay or settle any such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld.

14.1.2 Required Insurance of Tenant. Tenant and any contractor hired by Tenant to install, maintain, improve, restore, or remove the Communications Facility ("Contractor") shall not commence work under a permit until they have obtained the insurance required within this section. If any insurance is written with a deductible or self-insured retention, Tenant and Contractor shall be solely responsible for said deductible or self-insured retention. The purchase of insurance and the furnishing of a certificate of insurance shall not be a satisfaction of Tenant's indemnification of the City. Tenant is responsible to meet all OSHA requirements for on-the-job safety. Tenant during the term of this Lease, and Contractor, during any period of construction, maintenance or removal of the Communications Facility, shall, at such parties' expense, obtain and keep in force, for the protection of Tenant and the City, not less than the following insurance:

- (a) Property insurance, including coverage for fire, extended coverage, vandalism, and malicious mischief, upon the Communications Facility in an amount not less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo., which insurance policy shall name the City as an additional insured;
- (b) Workers' Compensation Insurance in accordance with all applicable statutes of the State of Missouri. Coverage shall include Employers Liability Coverage.
- (c) Commercial General Liability Insurance on an "occurrence" basis with limits of liability not less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. for Personal Injury, Bodily Injury, and Property Damage. Coverage shall include the following extensions:
 - (1) Contractual Liability
 - (2) Products and Completed Operations
 - (3) Independent Contractors Coverage
 - (4) Broad Form General Liability Extensions or equivalent
 - (5) Coverage for X, C and U Hazards
- (d) Motor Vehicle Liability Coverage for all vehicles used in the performing of the contract. Limits of Liability shall not be less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. for Bodily Injury and Property Damage.
- (e) Additional Insured. Commercial General Liability Insurance as described above shall include an endorsement stating that the City, including all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and their board members, employees, and volunteers, shall be an additional insured with full coverage as the insured.
- (f) Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance as described above shall include an endorsement stating that thirty (30) days advance written notice of cancellation, non-renewal, reduction, and/or material change shall be sent to the City at the address set out

in this Lease.

- (g) Proof of Insurance. If so requested by the City, Tenant and any-contractors hired by Tenant shall within thirty (30) days of such request, supply a certificate of insurance showing the City to be named as an additional insured in accordance with this Section.

14.3. Policies of Insurance

All required insurance policies must be taken out with insurance companies authorized to do business in the State of Missouri, having a Best's financial rating of X or higher and a policyholder's rating of at least A-. All required policies must contain an undertaking by the insurers to notify the other party in writing not less than fifteen (15) days before any material change, reduction in coverage, cancellation, or termination of the insurance.

15. FIXTURES

Landlord covenants and agrees that no part of the improvements installed, constructed, erected, or placed by Tenant on the Premises, will be or become, or be considered as being, affixed to or a part of Landlord's real property; and any and all provisions and principles of law to the contrary notwithstanding, it is the specific intention of Landlord to covenant and agree hereby that all personal property and improvements of every kind and nature installed, constructed, erected, or placed by Tenant on the Premises, or other real property owned or leased by Landlord, will be and remain the property of Tenant despite any default or termination of this Lease and may be removed by Tenant any time in Tenant's discretion provided that Tenant at its expense restores the Premises pursuant to Section 11.

16. ASSIGNMENT AND SUBLETTING BY TENANT

Tenant shall be entitled to assign or transfer this Lease at any time and from time to time, but only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed, nor conditioned upon any monetary payments or increased Rent. Any such assignment shall be subject to Tenant's assignee complying with conditions of the existing S.U.P. issued by Landlord. Notwithstanding the foregoing, no consent shall be required for an assignment or other transfer to a parent, subsidiary, or affiliated entity of Tenant, or to an entity controlled by Tenant, under common control with Tenant, or controlling Tenant, provided that any such assignee or transferee shall be subject to all the terms and conditions of this Lease and, in addition, Tenant may assign this Lease without the consent of Landlord in connection with a sale, transfer, or financing of all or a substantial part of Tenant's business in the wireless geographic area licensed to Tenant by the FCC within which the Premises is located, provided such assignee or transferee shall continue to use the Premises only for the purposes permitted hereunder and further provided Tenant shall provide Landlord written notice of the same within thirty (30) days of such assignment. Except for Verizon which is hereby approved as an authorized subtenant, Tenant shall be entitled to sublet this Lease or the Premises only with the prior written consent of the City, which consent shall not be unreasonably withheld, provided that Tenant increases Rent to Landlord as provided in Section 4 and each such subtenant agrees to comply with the terms of this Lease, including that such subtenant's equipment and antennas shall be in compliance with the terms of this Lease and Exhibit C. City's consent shall be deemed approved upon issuance of a Building Permit.

17. DEBT SECURITY

Tenant may, without Landlord's consent, pledge, mortgage, convey by deed of trust or security deed, assign, create a security interest in, or otherwise execute and deliver any and all instruments for the purpose of securing bona fide indebtedness on any or all of Tenant's interest in this Lease, any part thereof, and any and all of Tenant's right, title, and interest in and to any

and all of the Communications Facility. Promptly on Tenant's or Tenant's lender's request, Landlord shall execute and deliver, and shall assist in facilitating the execution and delivery of, all reasonable documents that do not interfere with Landlord's rights hereunder as may be requested by any of Tenant's lenders including but not limited to waivers of Landlord's right to levy or distrain upon for Rent any of Tenant's property given as security for a debt, consents that none of the Communications Facility shall become fixtures, consents to Tenant's assignment to any lender(s) of any and all of Tenant's interest in or to this Lease and the Communications Facility.

18. ENVIRONMENTAL MATTERS

Landlord warrants and represents that, to its reasonable knowledge, with no duty of inquiry, the Property is free of Hazardous Substances. The term "Hazardous Substance" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; and (c) any oil, petroleum products, and their by-products.

Tenant will indemnify, protect, defend, and hold harmless Landlord from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages, and expenses, including, without limitation, attorneys' fees and costs, sustained or incurred by Landlord pertaining to Hazardous Substances released by Tenant in, upon or beneath the Property and the improvements thereon.

19. CONDEMNATION/CASUALTY

If any governmental, public body, or other condemning authority takes, or if Landlord transfers in lieu of such taking, all or part of the Premises or access drive, or if the Mulch Site is damaged by any casualty, thereby making it physically or financially infeasible for the Premises to be used in the manner intended by the Lease, either party shall have the right to terminate this Lease effective as of the date of the taking by the condemning party or such casualty loss and the Rent shall be prorated appropriately. If only a portion of the Premises or access rights is taken, or only a portion of the Mulch Site is damaged and neither party elects to terminate this Lease under this provision, then the Lease shall continue but Rent payments provided under this Lease shall abate proportionately as to the portion taken which is not then usable by Tenant, as agreed to in writing between Tenant and Landlord.

20. TITLE

Landlord represents and warrants to Tenant that Landlord has good and marketable title to the Premises free and clear of all liens, encumbrances, and exceptions

21. QUIET ENJOYMENT

Landlord covenants that Tenant, upon paying the Rent and observing the other covenants and conditions herein upon its part to be observed, will peaceably and quietly hold and enjoy the right to use the Premises on the terms and conditions and for the purposes stated herein during the term of this Lease, as it may be extended, without hindrance, ejection, or molestation by Landlord or any person(s) or entity(ies) claiming under the Landlord. However, it is understood and agreed that any normal or necessary use of the Mulch Site by the City in accordance with Section 6 will not be a breach of this covenant. If Landlord decides to renovate or remodel the Mulch Site, Landlord shall provide Tenant with as much prior notice as possible and during the renovation or remodeling, permit Tenant to locate a truck-mounted portable tower on the Property if Tenant's service is interrupted. Landlord is to take reasonable steps necessary to minimize disruption to

Tenant's Communications Facility. No remodel or renovation work shall require removal or relocation of tower or equipment at the base of tower.

22. CONTINGENCIES

Notwithstanding anything contained herein to the contrary, and in addition to and not in limitation of Tenant's other rights hereunder, it is expressly agreed that Tenant's obligations under this Lease shall not commence until:

22.1. Tenant is satisfied with the status of title to the Premises and Tenant's receipt of a leasehold title insurance policy insuring its leasehold interest in the Premises in form and substance satisfactory to Tenant;

22.2. Tenant is satisfied, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing, and operating the Communications Facility; Tenant's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals, and consents from all applicable governmental authorities necessary or appropriate for Tenant to use and operate the Communications Facility on the Premises.

22.3. If any one (1) or more of the foregoing conditions set forth in Sections 22.1 through 22.2 are not fulfilled, waived, or satisfied by Tenant's written waiver or satisfaction on or before six (6) months after execution hereof ("Contingency Date"), then Tenant may either extend the Contingency Date by a period of sixty (60) days or terminate this Lease by written notice to Landlord given on or before the expiration of the original Contingency Date. If Tenant fails to timely give Landlord written notice that it elects to terminate this Lease, then the Contingency Date shall be automatically extended said sixty (60) day period. If Tenant extends the Contingency Date and any one (1) or more of the foregoing said conditions are not fulfilled, waived, or satisfied by Tenant's written waiver or satisfaction on or before the expiration of the Contingency Date as extended, then this Lease shall terminate and Tenant shall have no liability to Landlord on account of such termination.

23. INTERFERENCE

Landlord shall not allow or permit the Property to be used by any third parties in any manner which could cause any destructive or conflicting signal interference with the Communications Facility. Tenant shall not operate the Communications Facility in any manner which could cause any destructive or conflicting signal interference with any communications equipment of the Landlord that may be used in connection with its Property or in any manner which would interfere with the City's use of the Mulch Site.

24. COMPLIANCE

Landlord is not required to obtain any consent under any ground lease, mortgage, deed of trust, or other instrument encumbering the Property in order for Tenant to construct, operate, maintain, or access the Communications Facility.

During the term of this Lease, Tenant will comply with all applicable state, federal, and local laws relating to Tenant's use of the Premises. Tenant will not commit or suffer to be committed any waste on the Premises or any nuisance.

25. RECORDATION

Landlord and Tenant shall execute a memorandum of lease setting forth the general terms of this Lease. Once the memorandum of lease is fully executed in recordable form, Tenant, at Tenant's sole cost and expense, shall promptly record the memorandum of lease with the St. Louis County Recorder of Deeds and provide Landlord a copy of the same.

26. LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Tenant and shall indemnify, defend, and hold Landlord harmless from all claims, costs, and liabilities, including reasonable attorneys' fees and costs, in connection with or arising out of any such lien or claim of lien. Tenant shall cause any such lien imposed on the Premises to be released of record by payment or posting of a proper bond within thirty (30) days after written request by Landlord.

27. SUBORDINATION

Tenant agrees that this Lease shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Property and to all modifications thereto, provided that Tenant's possession of the Premises shall not be disturbed so long as Tenant continues to perform its duties and obligations under this Lease and Tenant's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this Section. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that, Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Lease.

28. ENTIRE AGREEMENT, AUTHORITY, AND BINDING EFFECT

This Lease and any attached exhibits and nondisturbance agreement(s) mentioning this Lease, constitute the entire agreement between Landlord and Tenant; no prior written promises or prior contemporaneous or subsequent oral promises or representations will be binding. This Lease will not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Lease. The invalidity of any portion of this Lease shall not have any effect on the balance thereof. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant. This Lease is freely and voluntarily executed by the parties hereto, without any duress or coercion. Each party has carefully and completely read all of the terms and provisions of this Lease and both represent and warrant to the other that each has the legal right, power, and authority to enter into this Lease and to perform its obligations hereunder. All parties hereby covenant, acknowledge, and agree that this Lease is a lawful and valid contract between the parties.

29. GOVERNING LAW

This Lease shall be governed by the laws of the state in which the Premises are located. The language used in this Lease shall be deemed to be language chosen by all parties to express their mutual intent, and no rule of strict construction against any party shall apply to any term or condition of this Lease.

30. NON-BINDING UNTIL FULLY EXECUTED

This Lease is for discussion purposes only and does not constitute a formal offer by either party. This Lease is not and shall not be binding on either party until and unless it is fully executed by both parties.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Lease as of the date and year first above written.

LESSOR: City of Ladue, MO

LESSEE: DRA Properties, LLC
a Missouri limited liability company

By: _____
Nancy Spewak

Title: Mayor of Ladue

Date: _____

Witness: _____

Print Name: _____

By: _____
Douglas K. Dolan

Title: Authorized Member

Date: _____

Witness: _____

Print Name: _____

Notary Public:

I do hereby certify that NANCY SPEWAK, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2017.

Notary Signature

Notary Public:

I do hereby certify that DOUGLAS K. DOLAN, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2017.

Notary Signature

EXHIBIT A

PROPERTY

PROPERTY DESCRIPTION (PARENT PARCEL)

LOT 1 OF CREEK BRIDGE, A SUBDIVISION IN SAINT LOUIS COUNTY, MISSOURI,
ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 151 PAGES 52 AND
53.

EXHIBIT B

PREMISES

The Premises shall consist of an area not to exceed 2,500 square feet ground space along with rights for access to the Premises by vehicle or foot from the nearest public way and for the installation of the Communications Facility and utilities authorized herein on the Premises in the locations as depicted below:

LESSEE LAND SPACE DESCRIPTION

A TRACT OF LAND IN LOT 1 OF CREEK BRIDGE, A SUBDIVISION IN SAINT LOUIS COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE PARENT PARCEL; THENCE ALONG A CURVE TO THE RIGHT ALONG THE SOUTH RIGHT OF WAY OF SOUTH OUTER 40 ROAD (80' WIDE) HAVING A RADIUS OF 1887.35 FEET, AND AN ARC LENGTH OF 95.00 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1033.99 FEET, AND AN ARC LENGTH OF 657.08 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, SOUTH 67 DEGREES 32 MINUTES 15 SECONDS EAST, 244.09 FEET; THENCE LEAVING SAID SOUTH RIGHT OF WAY, SOUTH 22 DEGREES 27 MINUTES 45 SECONDS WEST, 52.81 FEET; THENCE SOUTH 05 DEGREES 58 MINUTES 55 SECONDS WEST, 41.45 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 59 SECONDS WEST, 24.17 FEET TO THE POINT OF BEGINNING OF THE LESSEE LAND SPACE HEREIN DESCRIBED:

THENCE SOUTH 01 DEGREES 28 MINUTES 12 SECONDS WEST, 17.83 FEET; THENCE NORTH 84 DEGREES 37 MINUTES 28 SECONDS WEST, 53.72 FEET; THENCE NORTH 21 DEGREES 25 MINUTES 48 SECONDS EAST, 54.88 FEET; THENCE SOUTH 68 DEGREES 51 MINUTES 11 SECONDS EAST, 42.36 FEET; THENCE SOUTH 01 DEGREES 28 MINUTES 12 SECONDS WEST, 19.19 FEET TO THE POINT OF BEGINNING.

SAID LESSEE LAND SPACE BEING SITUATED IN ST. LOUIS COUNTY, MISSOURI AND CONTAINING 2,363 SQUARE FEET OR 0.054 ACRES MORE OR LESS.

LESSEE (20'W) NON-EXCLUSIVE ACCESS AND UTILITY RIGHT OF WAY DESCRIPTION

A 20 FOOT WIDE NON-EXCLUSIVE ACCESS AND UTILITY RIGHT OF WAY IN LOT 1 OF CREEK BRIDGE, A SUBDIVISION IN SAINT LOUIS COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE PARENT PARCEL; THENCE ALONG A CURVE TO THE RIGHT ALONG THE SOUTH RIGHT OF WAY OF SOUTH OUTER 40 ROAD (80' WIDE) HAVING A RADIUS OF 1887.35 FEET, AN ARC LENGTH OF 95.00 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1033.99 FEET, AN ARC LENGTH OF 657.08 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, SOUTH 67 DEGREES 32 MINUTES 15 SECONDS EAST, 244.09 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE OF THE 20 FOOT NON-EXCLUSIVE ACCESS AND UTILITY RIGHT OF WAY HEREIN DESCRIBED:

THENCE LEAVING SAID SOUTH RIGHT OF WAY, SOUTH 22 DEGREES 27 MINUTES 45 SECONDS WEST, 52.81 FEET; THENCE SOUTH 05 DEGREES 58 MINUTES 55

SECONDS WEST, 41.45 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 59 SECONDS WEST, 24.17 FEET TO THE TERMINUS OF SAID LESSEE 20 FOOT WIDE NON-EXCLUSIVE ACCESS AND UTILITY RIGHT OF WAY.

SAID LESSEE 20 FOOT WIDE NON-EXCLUSIVE ACCESS AND UTILITY RIGHT OF WAY BEING SITUATED IN ST. LOUIS COUNTY, MISSOURI AND CONTAINING 2,369 SQUARE FEET OR 0.054 ACRES MORE OR LESS.

LESSEE (10'W) UTILITY EASEMENT DESCRIPTION

A 10 FOOT WIDE UTILITY EASEMENT IN LOT 1 OF CREEK BRIDGE, A SUBDIVISION IN SAINT LOUIS COUNTY, MISSOURI BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE PARENT PARCEL; THENCE ALONG A CURVE TO THE RIGHT ALONG THE SOUTH RIGHT OF WAY OF SOUTH OUTER 40 ROAD (80' WIDE) HAVING A RADIUS OF 1887.35 FEET, AN ARC LENGTH OF 95.00 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1033.99 FEET, AN ARC LENGTH OF 657.08 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, SOUTH 67 DEGREES 32 MINUTES 15 SECONDS EAST, 244.09 FEET; THENCE LEAVING SAID SOUTH RIGHT OF WAY, SOUTH 22 DEGREES 27 MINUTES 45 SECONDS WEST, 52.81 FEET; THENCE SOUTH 05 DEGREES 58 MINUTES 55 SECONDS WEST, 44.72 FEET; THENCE SOUTH 78 DEGREES 14 MINUTES 07 SECONDS EAST, 10.05 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE OF THE LESSEE 10 FOOT WIDE UTILITY EASEMENT HEREIN DESCRIBED:

THENCE SOUTH 78 DEGREES 14 MINUTES 07 SECONDS EAST 203.97 FEET TO THE TERMINUS OF SAID LESSEE 10 FOOT WIDE UTILITY EASEMENT.

SAID LESSEE 10 FOOT WIDE UTILITY EASEMENT BEING SITUATED IN ST. LOUIS COUNTY, MISSOURI AND CONTAINING 2,040 SQUARE FEET OR 0.047 ACRES MORE OR LESS.

LESSEE (5'W) FIBER OPTIC EASEMENT DESCRIPTION

A 5 FOOT WIDE FIBER OPTIC EASEMENT IN LOT 1 OF CREEK BRIDGE, A SUBDIVISION IN SAINT LOUIS COUNTY, MISSOURI BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE PARENT PARCEL; THENCE ALONG A CURVE TO THE RIGHT ALONG THE SOUTH RIGHT OF WAY OF SOUTH OUTER 40 ROAD (80' WIDE) HAVING A RADIUS OF 1887.35 FEET, AN ARC LENGTH OF 95.00 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1033.99 FEET, AN ARC LENGTH OF 657.08 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, SOUTH 67 DEGREES 32 MINUTES 15 SECONDS EAST, 223.02 FEET TO THE POINT OF BEGINNING OF THE LESSEE 5' WIDE FIBER OPTIC EASEMENT HEREIN DESCRIBED:

THENCE CONTINUING ALONG SAID SOUTH RIGHT OF WAY, SOUTH 67 DEGREES 32 MINUTES 15 SECONDS EAST, 5.00 FEET; THENCE LEAVING SAID SOUTH RIGHT OF WAY, SOUTH 21 DEGREES 18 MINUTES 15 SECONDS WEST, 82.65 FEET; THENCE SOUTH 02 DEGREES 02 MINUTES 47 SECONDS WEST, 8.48 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 59 SECONDS WEST, 3.22 FEET; THENCE NORTH 01 DEGREES 28 MINUTES 12 SECONDS EAST, 9.19 FEET; THENCE NORTH 68 DEGREES 51 MINUTES 11 SECONDS WEST, 1.64 FEET; THENCE NORTH 21 DEGREES 18 MINUTES

15 SECONDS EAST, 83.13 FEET TO THE POINT OF BEGINNING OF SAID LESSEE 5 FOOT WIDE FIBER OPTIC EASEMENT.

SAID LESSEE 5 FOOT WIDE FIBER OPTIC EASEMENT BEING SITUATED IN ST. LOUIS COUNTY, MISSOURI AND CONTAINING 444 SQUARE FEET OR 0.010 ACRES MORE OR LESS.

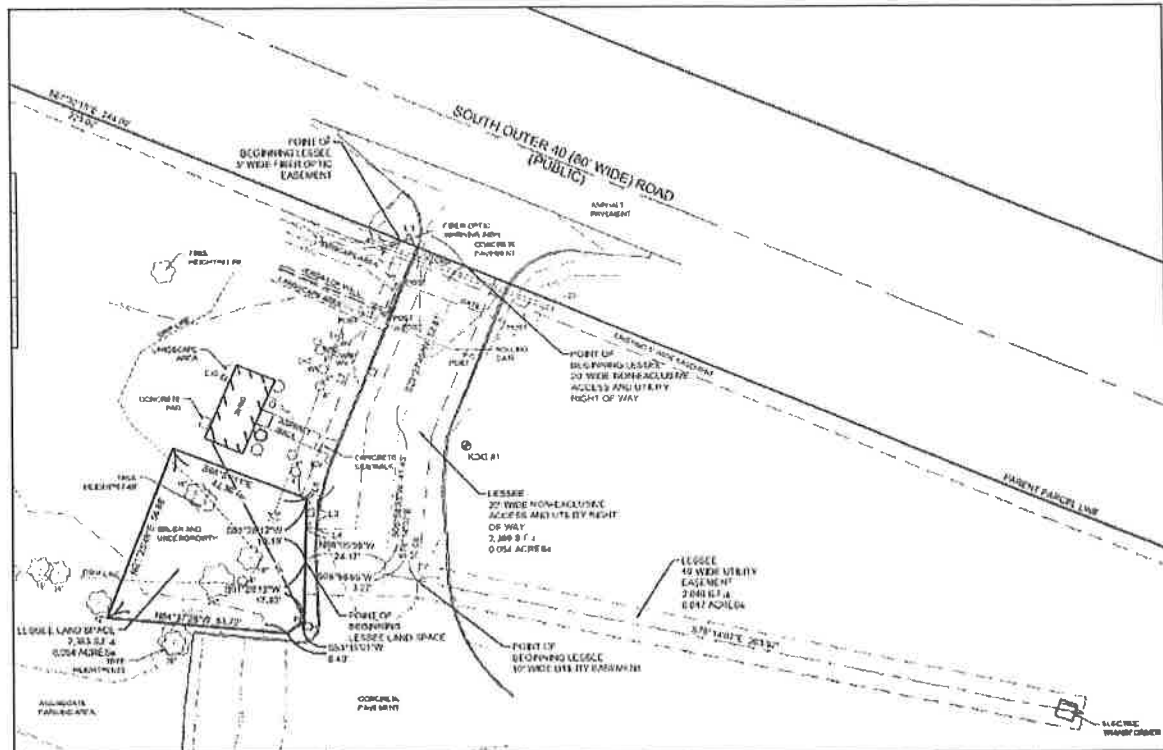


EXHIBIT C
SPECIAL USE PERMIT

Special Use Permit

City of Ladue, Missouri

Issued to DRA Properties, L.L.C.

For the property located at 9810 South Outer Forty Drive

WHEREAS, all procedures for the granting of Special Use Permit Amendments have been followed, pursuant to Section VII of Ordinance 1175, and state and federal law; and

WHEREAS, a Stealth Tower may be permitted in the D Residential Zoning District with a Special Use Permit, pursuant to Section VII – F of Ordinance 1175; and

WHEREAS, this application (#ZPC 16-16) was reviewed by the Zoning and Planning Commission at a duly noticed public hearing on November, 30, 2016 and then again at a duly noticed public hearing on February 22, 2017, and after reviewing the criteria for a Special Use Permit (Section VII – C) and listening to public comment, the application received a favorable recommendation from the Zoning and Planning Commission by a vote of 4 to 0; and

WHEREAS, this application was found to be out of compliance with several requirements in the Ladue City Ordinance 1175 Section VII – F, but has been granted Variances by the Zoning Board of Adjustment (Docket #1221) by a vote of 5 to 0 at their meeting on February 6, 2017, for each of these items of noncompliance, which consist of the following:

1. The tower may reach a height of 85 feet, with a total of 88 feet including all foliage, a variance of 8 feet from the required maximum height of 80 feet,
2. The tower may exceed the height of the surrounding trees by approximately 20 feet, for a variance of 15 feet from the requirement that a proposed stealth tower not exceed the height of surrounding trees by more than 5 feet,
3. Stealth towers may be installed on a lot not less than two (2) acres in size that is occupied by a church, school, private club, or cemetery. This lot exceeds two acres, but is not occupied by a church, school, private club, or cemetery,
4. The proposed stone-façade vinyl fence may be erected up to a height of 8 feet. Vinyl is generally not allowed as a fence material in Ladue.

WHEREAS, the City Council, after hearing comment at a public hearing on March 27, 2017 and after giving consideration to the criteria for issuance of a Special Use Permit (Section VII – C of Ordinance 1175) has determined that this application will not have a detrimental effect on the health, safety, morals, or the general welfare of the residents, including the effect on

- 1) Traffic in the streets;
- 2) Fire hazards;

- 3) Overcrowding of land or undue concentration of people;
- 4) Fire, police, and utility services;
- 5) Municipal expenditures;
- 6) The character of the district, and property values in the area; and
- 7) The general suitability of the property in question for the proposed use.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LADUE that the Special Use Permit (#ZPC 16-16) for a Stealth Tower and related equipment as shown on the site plan dated September, 2016 in the D Residential Zoning District is hereby granted with the following conditions:

1. As a precondition and before any construction may occur on the site, DRA Properties and City of Ladue must enter into a lease agreement whereby the City of Ladue can grant its consent, as landlord, for such tower to be located on City property, in compliance with Section 67.5096 RSMo.
2. The Stealth Tower and related equipment must be constructed and maintained in accordance with the site plans submitted to the City for review and dated September, 2016. The Stealth Tower is approved as a disguised tower as shown on said site plans and shall remain at all times a disguised tower without any exposed antennas on the Stealth Tower pursuant to said site plans.
3. The installation, operation, and maintenance of the Stealth Tower shall comply with all applicable federal, state, and City laws and regulations including specifically compliance with all FCC regulations, obtaining all necessary permits, and complying with applicable portions of the City's zoning ordinance, building code, and other applicable ordinances, including, but not limited to, the applicable criteria in Section VII- F of the Zoning Ordinance.
4. The Stealth Tower and artificial greenery is to be kept in good maintenance and repair with periodic replacement at its cost of the artificial greenery to address any weathering.
5. The Stealth Tower shall be secured from unauthorized access at all times.
6. DRA properties and the City of Ladue shall agree to a plan regarding gaining access to the mulch site property and shared maintenance of the gate. A written document, signed by both parties, shall be prepared.
7. DRA Properties shall meet with the owners of residential properties adjacent to the mulch site that would have view of the tower to provide for additional landscaping to help screen the view of the tower from their properties. DRA Properties shall then provide landscaping where appropriate for additional screening for owners of residential properties that would have view of the tower, in accordance with a landscaping plan provided by DRA Properties and approved by the City of Ladue.
8. DRA properties shall provide appropriate landscaping around the perimeter of the fence, in accordance with a landscaping plan provided by DRA properties and approved by the City of Ladue.

9. This SUP is subject to final approval from the St. Louis Metropolitan Sewer District.
10. When the Stealth Tower shall no longer be used for its original communications purposes, the owner of the property and/or Stealth Tower or the last lessee, licensee or user thereof shall be obligated, jointly and severally, at their expense to dismantle and remove promptly such Stealth Tower and all related equipment from the property. The licensed telecommunications user of such Stealth Tower shall provide the City with a copy of the notice to the FCC of intent to cease operations thereon and shall have ninety (90) days from cessation of operations to complete the dismantling and removal of its equipment from the property.
11. If the Stealth Tower and all related equipment are not removed based on the requirements of condition 10 above, the City reserves the right at any time thereafter and after giving thirty (30) days written notice to the interested parties to enter the property, remove the Stealth Tower and to charge the costs to the lessee, licensee or user thereof.
12. The City reserves the right to reexamine this Special Use Permit from time to time in the event that the use of and the activities of the facilities proposed in the Special Use Permit application shall result in a negative effect on property values or a detrimental effect on the safety and welfare of the general public.

The City recognizes that minor modifications to plans that are submitted with an application for a Special Use Permit may be necessary to comply with the requirements of the City or to accomplish the construction of the building or structure involved. All modifications must be brought to the attention of the City and City Planner, and the City Planner is required to resubmit any modifications which, in his/her reasonable determination, result in a change in the use that has been approved or that change the impact of the approved use on the City and its residents. Modifications of that type must be resubmitted to both the Zoning and Planning Commission and to the City Council.

Issued this 27th day of March, 2017 by a vote of 4 in favor and 0 against.

The City of Ladue

By:



Nancy Spewak, Mayor

Attested:


Laura Rider, City Clerk

ACCEPTED AND AGREED TO THIS 10th DAY OF APRIL, 2017.

DRA Properties, L.L.C.

By: 
PRESIDENT

Title

EXHIBIT D

RENT

Lease Year	Base Annual Rent – One Tenant
Year 1-5	\$18,000
Year 6-10	\$20,700
Year 11-15	\$23,805
Year 16-20	\$27,375
Year 21-25	\$31,482
Year 26-30	\$36,204

Schedule above does not reflect rent increases for each additional permitted subtenant of \$6,000 annually as provided in Section 4 of this Lease.

BILL NO. 2168

ORDINANCE NO. ____

AN ORDINANCE CALLING FOR A REGULAR ELECTION TO BE HELD IN THE CITY OF LADUE, ST. LOUIS COUNTY, MISSOURI, ON TUESDAY, APRIL 3, 2018, AND DESIGNATING THE ST. LOUIS COUNTY BOARD OF ELECTION COMMISSIONERS TO CONDUCT SUCH ELECTION IN COMPLIANCE WITH STATE STATUTE REQUIREMENTS AND THE REVISED MISSOURI ELECTION LAWS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LADUE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. Pursuant to the requirements of the Missouri State Statutes providing that a regular election shall be held on the first Tuesday after the first Monday in April each year, it is hereby proclaimed and established that a regular election shall be held in the City of Ladue, St. Louis County, Missouri, on Tuesday, April 3, 2018. Only those residents of the City of Ladue who have duly registered in a manner provided by law and who are otherwise eligible will be qualified to vote.

SECTION 2. At the said election there shall be elected one Alderman from each of the three wards of the City, all for a term of two years, to fill the vacancies in the respective offices which expire on April 3, 2018.

SECTION 3. The Board of Election Commissioners of St. Louis County shall conduct such election according to law and certify the results thereof. The Board of Election Commissioners shall designate such polling places as shall be required for the election and shall appoint such necessary election officials as may be required for the conduct thereof. The Board of Election Commissioners shall also publish notice of the election as shall be required by law and shall do and perform such other necessary acts as may be required to conduct the election in accordance with the statutes of the State of Missouri and the Ordinances of the City of Ladue.

SECTION 4. The polls for the election shall open at six o'clock (6:00) a.m. and remain open until seven o'clock (7:00) p.m. under the direction and supervision of the Board of Election Commissioners as aforesaid. Time referred to herein is official time according to law. (115.407 RSMo.)

SECTION 5. Persons desiring to file declarations of candidacy for any office to be elected at the election may do so between eight o'clock (8:00) a.m. on Tuesday, December 12, 2017, being the sixteenth (16th) Tuesday prior to the election, and five o'clock (5:00) p.m. on Tuesday, January 16, 2018, being the eleventh (11th) Tuesday prior to the election, at such times as the City Hall of the City of Ladue shall be open for business. Declarations of candidacy shall be filed with the City Clerk or her designee. Declarations of candidacy may be withdrawn only prior to five o'clock (5:00) p.m. on Tuesday January 16, 2018, unless otherwise ordered by the Board of Election Commissioners or a court of competent jurisdiction. (115.125 RSMO.)

SECTION 6. The City Clerk shall, on or before December 12, 2017, being the sixteenth (16th) Tuesday prior to the election, notify the general public of the opening filing date, the office or offices to be filed, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the City. (115.127.5 RSMo.)

SECTION 7. The City Clerk is authorized and directed, not later than 5:00 p.m. on January 23, 2018, being the tenth (10th) Tuesday prior to the election, to certify to the Board of Election Commissioners all candidates and offices and such further information as may be required by said Board with respect to said election and to complete and execute such forms as may be required by law or said Board relative thereto.

SECTION 8. This Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

PASSED THIS _____ DAY OF _____, 2017.

President, City Council

APPROVED AND ADOPTED THIS _____ DAY OF _____, 2017.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

BILL NO. 2169

ORDINANCE NO. _____

AN ORDINANCE REPEALING CHAPTER 110, ARTICLE III ENTITLED 'ARCHITECTURAL BOARD' IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 110, ARTICLE III ENTITLED 'ARCHITECTURAL REVIEW BOARD'.

WHEREAS, the City of Ladue established an Architectural Board by Ordinance 131 on March 13, 1940 and has made periodic modifications to the ordinance since that time regarding procedures for the Architectural Board; and

WHEREAS, the City has been in receipt of feedback from the community, members of the Architectural Board, and the City Attorney regarding the procedures, requirements, and operation of the Architectural Board; and

WHEREAS, members of the Building Department staff reviewed Article III of Chapter 110 in its entirety and based on the feedback as described above, created an updated Article III of Chapter 110; and

WHEREAS, City Council, after careful review, desires to and finds it in the best interests of the community to repeal Chapter 110, Article III and adopt a new Chapter 110, Article III; and

WHEREAS, a copy of this bill has been made available for public inspection prior to its consideration by the Council and read by title two times in an open meeting prior to passage.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LADUE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. The City of Ladue hereby repeals existing Article III of Chapter 110 of the Ladue Code and enacts a new Article III of Chapter 110 in lieu thereof as set out in "Exhibit 1" attached hereto and incorporated herein.

SECTION 2. This Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED THIS _____ DAY OF _____ 2017.

President, City Council

ADOPTED AND APPROVED THIS ____ DAY OF _____ 2017.

Nancy Spewak, Mayor

ATTEST:

Laura A. Rider, City Clerk

Exhibit 1

CHAPTER 110, ARTICLE III: ARCHITECTURAL REVIEW BOARD

ARTICLE III. – ARCHITECTURAL REVIEW BOARD

Sec. 110-63. – Establishment and Purpose.

There is hereby established a board in and for the City which shall be known as the Architectural Review Board.

The purpose of this Board shall be to two-fold; to develop architectural and design guidelines for the City of Ladue in accordance with section 110-70 and to apply those guidelines in reviewing projects within the City as to whether or not the project adheres to such guidelines.

(Code 1969, § 31-37; Ord. No. 131, § 1, 3-18-1940).

Sec. 110-64. - Composition.

The Architectural Review Board shall consist of three members. Two alternate members may be appointed to serve in the absence of or the disqualification of the regular members.

(Code 1969, § 31-38; Ord. No. 131, § 1, 3-18-1940; Ord. No. 1712, § 1, 4-19-1999)

Sec. 110-65. - Qualifications of members.

Only reputable architects licensed by the State of Missouri who are residents of the City shall be eligible as regular or alternate members of the Architectural Review Board; provided that one regular member and one alternate member may be a reputable landscape architect licensed by the State of Missouri.

(Code 1969, § 31-39; Ord. No. 131, § 3, 3-18-1940; Ord. No. 1712, § 1, 4-19-1999)

Sec. 110-66. - Appointment of members.

Each regular member and each alternate member of the Architectural Review Board shall be appointed by the Mayor with the approval of the City Council.

(Code 1969, § 31-40; Ord. No. 131, § 2, 3-18-1940; Ord. No. 1712, § 1, 4-19-1999)

Sec. 110-67. - Terms of members.

Each member shall be appointed for a term of two years.

(Code 1969, § 31-41; Ord. No. 131, § 2, 3-18-1940)

Sec. 110-68. - Removal of members.

Members of the Architectural Review Board may be removed without cause at the will of the Mayor and with the consent of the City Council.

(Code 1969, § 31-42; Ord. No. 131, § 2, 3-18-1940)

Sec. 110-69. - Designation of chairman.

The chairman of the Architectural Review Board shall be designated by the Mayor.

(Code 1969, § 31-43; Ord. No. 131, § 4, 3-18-1940)

Sec. 110-70. – Meetings; Establishment of guidelines.

Regular meetings of the Architectural Review Board shall be held at the call of the Building Department and at such other times as the Board or the Mayor may determine. Two members shall constitute a quorum and, in the absence of the chairman, the member next in seniority shall be the acting chairman. No action of the Board shall be taken except at a meeting open to the public. The Board shall keep minutes of its meetings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. These meeting minutes shall be approved in open session of the Architectural Review Board.

A majority of the Board may adopt rules and regulations to govern the procedure before the Board. Procedural guidelines, shall be established by the Board.

Amendments to the Architectural guidelines shall be prepared by the Architectural Board, then reviewed by the Zoning and Planning Commission, and approved by City Council.

(Code 1969, § 31-44; Ord. No. 131, § 4, 3-18-1940; Ord. No. 1788, § 1, 11-19-2001)

Sec. 110-71. – Architectural Review Board applications—Submitted to Board.

- (a) Any building or construction project, except those described in subsection (d) of this section, for which a building permit is required by ordinances of the City, shall require the review and approval of the Architectural Review Board. In addition to the application for a building permit, a separate application shall be completed for submission to the Architectural Review Board and shall submit to the building department five complete paper sets (plan size shall be 24" by 36") and one electronic set of the following items and materials (except the color and material board described in subsection (a)(5) of this section which shall be brought to the meeting) for transmittal to the Architectural Review Board for its review:
- (1) Schematic site plan at a scale of not less than one inch equals 20 feet with dimensioned property lines, building setback lines, easements identified, existing and proposed area of work, location of driveways and parking areas, topographic contours of the existing grades and proposed finished grades at two-foot interval minimums for a distance 25 feet from the face of the existing and proposed area of work with an indication of direction of flow of stormwater, locating proposed landscape material, landscape material proposed to be removed and identifying any accessory structures (proposed or existing).
 - (2) Schematic floor plans (at a minimum scale of one-quarter inch equals one foot) showing overall building dimensions.
 - (3) Schematic building elevations (at a minimum scale of one-quarter inch equals one foot) showing vertical dimensions, fenestration, proposed materials and colors, and any existing construction where an addition or modification is proposed. All existing and proposed building materials shall be indicated on the existing building elevations.
 - (4) Color photographs, sized 8.5" x 11", of the main building located on adjoining property. Color photographs, sized 8.5" x 11", of all building elevations of existing structures for projects involving remodeling or additions.
 - (5) The application materials must include a list of all building enclosure materials, including the style and make of all windows and doors. Brochures, pictures, or other information shall be required for all non-standard building materials. Applicants are encouraged to submit an architectural color board showing the materials and colors to be used on the exterior of the building. Samples of representative proposed building materials shall be presented at the meeting where the application is being considered.

- (6) Any proposed construction in excess of 400 square feet of floor area shall require architectural plans prepared by and bearing the professional seal and signature of a person licensed to practice architecture in the state according to RSMo ch. 327. Any work associated with the proposed construction which is engineering in nature, and not incidental to the architectural scope per RSMo ch. 327, shall require plans or drawings prepared by and bearing the seal and signature of a person licensed under the same statute to practice engineering.

The documents herein required for review by the Architectural Review Board are in addition to and not in lieu of such plans, detailed drawings and specifications as may be required for submission to the Building Official by the provisions of all applicable ordinances of the City.

- (b) No building permit for a building project subject to this section shall be approved or issued by the Building Official until the Architectural Review Board has completed its review of and has issued its ruling hereunder with respect to such project.
- (c) Any building plans and documentation related to such project once approved by the Board and returned to the Building Official for further processing of an application for a building permit shall not thereafter be revised, altered or changed by the applicant in any way affecting the outward appearance of the structure nor shall the same be approved, or permitted by the Building Official, either before or after issuance of a building permit or at any time during the progress of the execution of the work, without first resubmitting the project to the Architectural Review Board for its further review and consideration hereunder and obtaining its approval thereof.
- (d) Plans for projects involving alterations and repairs which do not affect the outward appearance of a building do not require approval of the Architectural Review Board, however a building permit may still be required for the project.
- (e) When any project subject to review pursuant to this section lies within a subdivision, the trustees of that subdivision must be notified of the project and must sign the plan sheet that includes the proposed building elevations as proof of said notification in accordance with Ordinance No. 2153.
- (f) The Board may require, if it is necessary in the opinion of the Board, an architectural study model for all residential and commercial construction except those described in subsection (d) of this section. The model shall be constructed to a scale of not less than one-eighth inch equals one foot. Such study model is not required for projects for additions and modifications that involve less than 400 square feet.

(Code 1969, § 31-45; Ord. No. 131, § 5, 3-18-1940; Ord. No. 1594, § 1, 4-17-1995; Ord. No. 1659, § 1, 2-24-1997; Ord. No. 1663, § 1, 3-25-1997; Ord. No. 1678, §§ 1, 2, 1-19-1998)

Sec. 110-72. - Same—Consideration.

- (a) Promptly after an application for submission to the Architectural Review Board and all the supporting data itemized above have been filed in good order in the office of the Building Department, the same shall be placed on an upcoming agenda of the Architectural Review Board, in accordance with the policy of the Building Department and the project will be evaluated subject to conformity to the architectural guidelines of the City of Ladue concerning appearance and design.
- (b) In making any determination hereunder with respect to conformity of the proposed structure to the standards set out in this subsection (a), the Board may consider its massing and scale in relation to the size of the lot on which the structure is to be situated and to the size of the other structures in the surrounding neighborhood.

(Code 1969, § 31-47; Ord. No. 131, § 7, 3-18-1940; Ord. No. 1788, § 3, 11-19-2001)

Sec. 110-73. - Same—Approval; conditional approval; continuance; disapproval.

At said meeting of the Architectural Review Board, the Board shall take one of the following actions:

- (1) The Board shall approve the application if, in its opinion, the proposed structure will be in conformity with the standards set out in section 110-72;
- (2) The Board shall conditionally approve the application if, in its opinion, the proposed structure will be in conformity with the standards set out in section 110-72; provided, the applicant makes changes in the drawings and specifications in strict conformity with recommendations from the Board to subsequently be administratively reviewed and approved by the Building Department;
- (3) The Board shall continue the application, if in its opinion, the proposed project submittal does not have all the information necessary for them to complete their review, and the Board provides recommendations on additional information needed to be presented at a future meeting.
- (4) The Board shall disapprove the application if, in its opinion, the proposed structure will not be in conformity with the standards set out in section 110-72 and the Board has no reasonable recommendations that, if adopted, would cause it to so conform. The Board shall provide written reasons for the disapproval.

(Code 1969, § 31-48; Ord. No. 131, § 8, 3-18-1940; Ord. No. 1659, § 3, 2-24-1997; Ord. No. 1788, § 4, 11-19-2001)

Sec. 110-74. - Same—Issuance of permit.

If the Architectural Review Board returns the application to the Building Official with approval, the Building Official may issue the required permits. If the Board shall return the application to the Building Official with conditional approval and recommendations, the Building Official may issue the required permits; provided that the applicant shall make appropriate changes in the drawings and specifications and agree to comply with all recommendations of the Board before the permit is issued.

(Code 1969, § 31-51; Ord. No. 131, §§ 11, 12, 3-18-1940; Ord. No. 1659, § 5, 2-24-1997; Ord. No. 1788, § 7, 11-19-2001)

Sec. 110-75. - Appeals.

- (a) In the event the application is disapproved or the applicant feels that the conditions imposed by the Board constitute a hardship, the applicant may appeal to the Zoning Board of Adjustment to review the decision of the Architectural Review Board. To the fullest extent permitted by law, the appeal process herein shall be exhausted before any action may be filed in any court. An appeal may be taken by an applicant by filing with the Building Department, together with the payment of the fee established by ordinance and a letter asking for a public hearing before the Board of Adjustment and attaching to said letter a copy of the letter stating that the project has been disapproved by the Board or the report of the Board with the required conditions or the recommendations of the Board, as applicable.)
- (b) Upon an appeal being taken, the Board of Adjustment shall establish a reasonable time for the hearing of the appeal, give public notice thereof, in accordance with Section IX of the Zoning Ordinance of the City of Ladue. At such hearing, the Board of Adjustment may consider the same standards as set forth in section 110-72, may consider the testimony of members of the Architectural Review Board or other architects in connection with such appeal, and shall follow all applicable statutory requirements.
- (c) The Board of Adjustment, at such hearing, shall hear such interested parties as may desire to be heard and after said hearing shall approve or disapprove the application, or shall approve same, subject to recommendations or conditions. If the Board of Adjustment approves the application, or approves same, subject to conditions, and the applicant complies with the conditions, the permit shall be issued forthwith, otherwise no permit shall be issued. The action of the Board of Adjustment

in regard to the application, together with the report of the Architectural Review Board, shall be included in the minutes of the Board of Adjustment.

(Code 1969, § 31-53; Ord. No. 131, § 16, 3-18-1940; Ord. No. 1612, § 1, 11-6-1995; Ord. No. 1659, § 6, 2-24-1997; Ord. No. 1788, § 9, 11-19-2001)

Secs. 110-76—110-100. - Reserved.

BILL NO. 2170

ORDINANCE NO. _____

AN ORDINANCE APPROVING RIGHTS-OF-WAY USE AGREEMENTS, SETTLEMENTS, AND RELEASES FOR COMMUNICATIONS FACILITIES WITH MCIMETRO ACCESS TRANSMISSION SERVICES, CORP., MCI COMMUNICATIONS SERVICES, INC., AND XO COMMUNICATIONS SERVICES, LLC

WHEREAS, MCImetro Access Transmission Services, Corp., MCI Communications Services, Inc., and XO Communications Services, LLC (individually, "Licensee", together, the "Licensees") have each requested consent from the City to authorize their use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City's consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way for placement of various communications facilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, the City and each Licensee has negotiated a Rights-of-Way Use Agreement for Communications Facilities ("ROW Use Agreement"), to establish the terms of each Licensee's use of the Rights-of-Way, to replace and supersede all prior authority which each Licensee may have operated under, and to incorporate the provisions and definitions of the City's Code of Ordinances, particularly the City's Rights-of-Way Code, Chapter 90, Article VII; and

WHEREAS, the City and Licensees also desire to compromise, resolve, and settle their disputes over compensation that the City claims to be due, applicability of any prior agreements or authorization, and any credits Licensees claim for past use of the City Rights-of-Way by Licensees and their predecessor entities (the "Disputes"), and a settlement and release relating to those Disputes between the City and each Licensee are contained within each Licensee's ROW Use Agreement; and

WHEREAS, the City Council of the City of Ladue now desires to enter into the ROW Use Agreement with MCImetro Access Transmission Services, Corp., in substantially the form attached to this ordinance in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the City Council of the City of Ladue now desires to enter into the ROW Use Agreement with MCI Communications Services, Inc. in substantially the form attached to this ordinance in Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the City Council of the City of Ladue now desires to enter into the ROW Use Agreement with XO Communications Services, LLC in substantially the form attached to this ordinance in Exhibit C, attached hereto and incorporated herein by reference; and

WHEREAS, this bill has been made available for public inspection prior to its consideration by the City Council and read by title two times in open meeting prior to passage.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LADUE, ST. LOUIS COUNTY MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized to execute the ROW Use Agreement between the City and MCImetro Access Transmission Services Corp., in substantially the form of Exhibit A, attached hereto and incorporated herein by reference, relating to compensation for, and conditions upon, MCImetro Access Transmission Services Corp.'s use of the City's Rights-of-Way. The Mayor and designees are further authorized to take such additional action as may be necessary or contemplated pursuant to this Agreement or to carry out the intent of this ordinance.

SECTION 2. The Mayor is hereby authorized to execute the ROW Use Agreement between the City and MCI Communications Services, Inc., in substantially the form of Exhibit B, attached hereto and incorporated herein by reference, relating to compensation for, and conditions upon, MCI Communications Services, Inc.'s use of the City's Rights-of-Way. The Mayor and designees are further authorized to take such additional action as may be necessary or contemplated pursuant to this Agreement or to carry out the intent of this ordinance.

SECTION 3. The Mayor is hereby authorized to execute the ROW Use Agreement between the City and XO Communications Services, LLC, in substantially the form of Exhibit C, attached hereto and incorporated herein by reference, relating to compensation for, and conditions upon, XO Communications Services, LLC's use of the City's Rights-of-Way. The Mayor and designees are further authorized to take such additional action as may be necessary or contemplated pursuant to this Agreement or to carry out the intent of this ordinance.

SECTION 4. MCImetro Access Transmission Services, Corp., MCI Communications Services, Inc., and XO Communications Services, LLC have on file a request for modification to the deductible amount specified in their respective ROW Use Agreements, as authorized by their respective ROW Use Agreements, and the Mayor is hereby authorized to approve the same with consultation with the City Attorney.

SECTION 5. This ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED THIS 20TH DAY OF NOVEMBER 2017.

President, City Council

ADOPTED AND APPROVED THIS 20TH DAY OF NOVEMBER 2017.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

Exhibit A

MCImetro Access Transmission Services, Corp. ROW Use Agreement

RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES

THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation registered to do business in Missouri (the "Licensee"), and the City of Ladue, Missouri, a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

WHEREAS, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City's consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way ("Rights-of-Way" or "ROW") for placement of various communications facilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

WHEREAS, the City and Licensee also desire to compromise, resolve, and settle their dispute over compensation that the City claims to be due, applicability of any prior agreements or authorization, and any credits Licensee claims for past use of the City Rights-of-Way by Licensee and its predecessor entities (the "Dispute"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 90, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Service," as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services

(among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreements Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the ROW.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service** within the City, subject, however, to the terms and conditions herein set forth within this Agreement and the Code and all such special conditions as may be set forth in Exhibit A. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Facilities are subject to prior City approval and consent. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

2.5 No Interference. Licensee shall construct and maintain its Facilities to be so located, constructed and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation and Collocation Requirements. Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in section 7.6, below.

SECTION 3. TERM, COMPENSATION, AND SETTLEMENT

3.1 Term. This Agreement shall be effective for a term of ten (10) years from the Effective Date, and shall continue from year to year thereafter, unless terminated by either party with ninety (90) days prior written notice to the other of an intent to terminate this Agreement following the Initial Term, provided in no circumstance shall this Agreement be effective for longer than twenty (20) years and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

3.2 Compensation – User Fees. Licensee agrees to pay the City a linear foot user fee and such other compensation in the amount and under such additional regulations and provisions as are set forth in this Agreement and in the City's policies and Ladue Code. Unless otherwise hereinafter established by the City's Governing Body, Licensee shall pay to the City an annual fee of one dollar and ninety cents (\$1.90) per linear foot of Facilities located in the Rights-of-Way, or portion thereof, on an annual basis with a minimum fee of \$4,000 per year, or as otherwise established by the City Council from time to time. Licensee shall be entitled to a credit pursuant to Section 67.1846 RSMo. against the user fees due hereunder equal to the payment(s) from Licensee for the same time period for the business license or gross receipts tax paid by Licensee to City; provided, however, in no case shall such credit exceed the amount

of the user fee due and may not be carried forward or back to any other time period and the credit shall only be applied to the specified period as authorized in Section 3.5 below. The actual authorized installation authorized by this Agreement shall be limited to that which has received approved permits from the City and linear foot fees shall be paid based on the sum of the actual linear foot of facilities installed and any additional linear foot approved by permit for installation. No credit shall apply to any taxes paid under protest.

3.3 Timing of Payment of User Fees. Payment shall be due and payable on an annual basis in advance prior to commencement of each permitted installation and no later than issuance of an excavation or rights-of-way permit, with the annual payment prorated to the following March 1, and thereafter on or before March 1 of each subsequent year for the following calendar year. No portion of any user fee shall be subject to refund due to abandonment or removal of the facilities during a prepaid period.

3.4 Interest on Late Payments and Under Payments. If any user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment due and on any unpaid balance shall accrue from the due date until received, at the rate of nine (9) percent of the total amount past due or at such other rate as may be required by law.

3.5 Fee Statement; Retroactive Adjustments. Licensee shall provide with each user fee payment a statement showing the manner in which the rights-of-way user fee was calculated. If any fee statement is determined to understate the fees owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided in Section 3.4, above. No later than February 15 of each year, Licensee shall submit to the City a verified statement certifying the total linear feet occupied in the Rights-of-Way during the prior calendar year and the location of each segment(s). If Licensee seeks a credit for gross receipts taxes pursuant to Section 3.2 above paid to the City during the prior calendar year, it shall also include in such verified statement and for such prior calendar year: (1) all gross revenues received subject to the tax to be credited, (2) total amount of such tax paid to the City, and (3) the dates of each tax payment, and check numbers or other documentation sufficient for the City to verify its receipt of all such payments. Such credit may only be applied to the next annual user fee payment provided such credit and calculation is shown on the statement accompanying the payment. The City retains the right to disallow any credit or portion thereof if the City determines the credit is not documented or otherwise authorized.

3.6 User Fee Not a Tax. The above required user fees and other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Code, herein, and as set forth in § 67.1846. Licensee acknowledges that the user fees are compensation for use of the Rights-of-Way, both underground and above ground, and shall in no way be deemed a tax of any kind.

3.7 Linear Feet of Facilities. Licensee states that it currently has 35,083 linear feet of facilities in City Rights-of-Way and proposes installation of approximately 25,994 linear feet of underground Facilities and 7,174 linear feet of aerial Facilities within the City ROW, for a total of 68,251 linear feet for the purposes authorized herein, as depicted on Exhibit B attached hereto and incorporated.

3.8 Settlement Payment and Release For Past Right-of-Way User Fees. Licensee will pay to the City on or before December 31, 2017, the non-refundable amount of \$383,983 as payment ("Settlement Payment") in full for its and its predecessor entities' use of the Rights-of-Way up to and including December 31, 2017. Licensee's agreement to make this payment and City's agreement to accept this payment to settle the Dispute shall not constitute or be considered an admission of liability or wrongdoing (including, without limitation, noncompliance with permitting requirements), or an agreement as to the validity of any of the positions advanced by the other regarding the Dispute. Each Party agrees, on behalf of itself and its past, present, and future employees, officers, directors, attorneys, shareholders, representatives, predecessors, successors, permitted assigns, subsidiaries, parents, and partners absolutely, unconditionally, completely, and without reservation, to release, acquit, irrevocably remise, and forever discharge the other Party and its respective past, present, and future employees, officers, directors,

attorneys, shareholders, representatives, predecessors, successors, permitted assigns, parents, and partners of and from any and all manner of claims, counterclaims, costs, expenses, demands, rights, liabilities, damages, potential actions, causes of action, suits, judgments, decrees, retroactive adjustments or refunds, interest, late payment charges, fines, bonds, bills, and controversies of any kind and nature whatsoever, at law, in equity, or otherwise including, without limitation, claims based on specific or punitive damages, whether known or unknown, arising from the Dispute, provided nothing herein shall be deemed to release any claim to enforce this Agreement, and any other lawful obligation of Licensee to City or City to Licensee not released herein, including but not limited to such obligations of taxes or regulatory compliance to City as a governmental entity. The Parties acknowledge and agree that, although they may hereafter discover law or facts in addition to or different from those which they know or believe to be true as of the Effective Date related to the Dispute, it is their intention with respect to each other, to settle and release the Dispute fully, finally, and forever; and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts or law. The Parties may have other disputes between them, known or unknown, that are not settled or released herein. Nothing in this Agreement binds or can bind any entity other than those named above, except as to any predecessor entities pursuant to which the Dispute has arisen. Each Party warrants and represents that it has not assigned, transferred, or conveyed all or any portion of the claims covered by this Agreement and that this warranty and representation is an essential and material term of this Agreement, without which it would not have entered into it.

SECTION 4. TAXES

4.1 The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing herein is intended to alter, amend, modify or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law, with the exception of the Use Fee set forth in this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or

transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee's installed Facilities for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

6.1 In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code of Ordinances, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if the Licensee loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Insurance. In addition to the requirements of Section 90.283(d) of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,727,489.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. **The insurance requirements in this section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file**

with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.** Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the ROW, equipment within the ROW or otherwise by Licensee's use of the ROW.

7.4 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees, in the event that Licensee is determined judicially to have violated the terms of this Agreement.

7.5 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.6 Relocation or Removal of Facilities.

7.6.1 In addition to the requirements of Section 90.283 of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.6.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate its Facilities as may be reasonably necessary for permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least 14 days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within 7 days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.7 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent interest per month until paid.

SECTION 9. NOTICE

9.1 Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

MCImetro Access Transmission Services Corp.
d/b/a Verizon Access Transmission Services
600 Hidden Ridge Drive, #E02E97
Irving, TX 75038

If Notice to City:

City of Ladue, Missouri

Attn: Director of Public Works
9345 Clayton Rd.
Ladue, MO 63124

9.2 If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF LADUE, MISSOURI

Nancy Spewak, Mayor

Date: _____

ATTEST:

Laura Rider, City Clerk

**MCIMETRO ACCESS TRANSMISSION
SERVICES CORP. D/B/A VERIZON
ACCESS TRANSMISSION SERVICES**

By: _____

Print Name: Robert F. McGee

Title: Exec Director Network Engineering

Date: 11/14/17

(CORPORATE SEAL)

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

The forgoing instrument was acknowledged before me this NOVEMBER 14, 2017, by ROBERT MCGEE, on behalf of MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services. This person is personally known to me or has produced TX DL as identification.

Joseph M. Weachock
(Signature of Notary taking Acknowledgment)
JOSEPH M. WEACHOCK

Notary Public, State of TEXAS

My Commission Expires: 10/13/2019

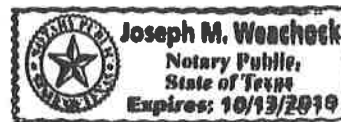


EXHIBIT A

SPECIAL CONDITIONS APPLICABLE TO COMMUNICATION COMPANIES

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. all new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including when and where similar facilities exist above ground or when conditions are such that underground construction is impossible, impracticable or economically unfeasible, as determined by the City, and where in the City's reasonable judgment the aboveground construction has minimal aesthetic impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City
2. Licensee acknowledges and agrees that pursuant to its obligation to pay all legally applicable taxes it shall pay the City's license tax as a ROW user and asserting its status as selling telephone services, and shall remit to the City such tax on gross receipts of all of its revenue from its services authorized herein or otherwise as required by Article II of Chapter 106 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the right-of-way permit application or otherwise to the City) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.
4. For purposes of clarification only, a document providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided it otherwise complies with the requirements of this Agreement and meets the following conditions:
 - Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own, control, maintain, modify, physical access, or revise the facilities in the ROW, whether specific facilities or not; and
 - Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

EXHIBIT B

Purple = New Fiber Into Existing Facilities (Conduit)

Pink = Existing Facilities Underground

Green = New Underground

Yellow = New Aerial

Exhibit B

MCI Communications Services, Inc. ROW Use Agreement

RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES

THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, MCI Communications Services, Inc., a Delaware corporation registered to do business in Missouri (the "Licensee"), and the City of Ladue, Missouri, a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

WHEREAS, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City's consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way ("Rights-of-Way" or "ROW") for placement of various communications facilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

WHEREAS, the City and Licensee also desire to compromise, resolve and settle their dispute over compensation that the City claims to be due, applicability of any prior agreements or authorization, and any credits Licensee claims for past use of the City Rights-of-Way by Licensee and its predecessor entities, including without limitation MCI Telecommunications Corporation, and Verizon Business Network Services, Inc. with respect to its ownership of the Facilities depicted on Exhibit B (the "Dispute"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 90, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or

"Internet Service," as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreements Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the ROW.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service** within the City, subject, however, to the terms and conditions herein set forth within this Agreement and the Code and all such special conditions as may be set forth in Exhibit A. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Facilities are subject to prior City approval and consent. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other

than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

2.5 No Interference. Licensee shall construct and maintain its Facilities to be so located, constructed and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation and Collocation Requirements. Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in section 7.6, below.

SECTION 3. TERM, COMPENSATION, AND SETTLEMENT

3.1 Term. This Agreement shall be effective for a term of ten (10) years from the Effective Date, and shall continue from year to year thereafter, unless terminated by either party with ninety (90) days prior written notice to the other of an intent to terminate this Agreement following the Initial Term, provided in no circumstance shall this Agreement be effective for longer than twenty (20) years and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

3.2 Compensation – User Fees. Licensee agrees to pay the City a linear foot user fee and such other compensation in the amount and under such additional regulations and provisions as are set forth in this Agreement and in the City's policies and Ladue Code. Unless otherwise hereinafter established by the City's Governing Body, Licensee shall pay to the City an annual fee of one dollar and ninety cents (\$1.90) per linear foot of Facilities located in the Rights-of-Way, or portion thereof, on an annual basis with a minimum fee of \$4,000 per year, or as otherwise established by the City Council from

time to time. Licensee shall be entitled to a credit pursuant to Section 67.1846 RSMo. against the user fees due hereunder equal to the payment(s) from Licensee for the same time period for the business license or gross receipts tax paid by Licensee to City; provided, however, in no case shall such credit exceed the amount of the user fee due and may not be carried forward or back to any other time period and the credit shall only be applied to the specified period as authorized in Section 3.5 below. The actual authorized installation authorized by this Agreement shall be limited to that which has received approved permits from the City and linear foot fees shall be paid based on the sum of the actual linear foot of facilities installed and any additional linear foot approved by permit for installation. No credit shall apply to any taxes paid under protest.

3.3 Timing of Payment of User Fees. Payment shall be due and payable on an annual basis in advance prior to commencement of each permitted installation and no later than issuance of an excavation or rights-of-way permit, with the annual payment prorated to the following March 1, and thereafter on or before March 1 of each subsequent year for the following calendar year. No portion of any user fee shall be subject to refund due to abandonment or removal of the facilities during a prepaid period.

3.4 Interest on Late Payments and Under Payments. If any user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment due and on any unpaid balance shall accrue from the due date until received, at the rate of nine (9) percent of the total amount past due or at such other rate as may be required by law.

3.5 Fee Statement; Retroactive Adjustments. Licensee shall provide with each user fee payment a statement showing the manner in which the rights-of-way user fee was calculated. If any fee statement is determined to understate the fees owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided in Section 3.4, above. No later than February 15 of each year, Licensee shall submit to the City a verified statement certifying the total linear feet occupied in the Rights-of-Way during the prior calendar year and the location of each segment(s). If Licensee seeks a credit for gross receipts taxes pursuant to Section 3.2 above paid to the City during the prior calendar year, it shall also include in such verified statement and for such prior calendar year: (1) all gross revenues received subject to the tax to be credited, (2) total amount of such tax paid to the City, and (3) the dates of each tax payment, and check numbers or other documentation sufficient for the City to verify its receipt of all such payments. Such credit may only be applied to the next annual user fee payment provided such credit and calculation is shown on the statement accompanying the payment. The City retains the right to disallow any credit or portion thereof if the City determines the credit is not documented or otherwise authorized.

3.6 User Fee Not a Tax. The above required user fees and other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Code, herein, and as set forth in § 67.1846. Licensee acknowledges that the user fees are compensation for use of the Rights-of-Way, both underground and above ground, and shall in no way be deemed a tax of any kind.

3.7 Linear Feet of Facilities. Licensee states that it currently has 8,028 linear feet of Facilities in City Rights-of-Way as depicted on Exhibit B attached hereto and incorporated. Licensee does not currently propose installation of additional Facilities within the City ROW.

3.8 Settlement Payment and Release For Past Right-of-Way User Fees. Licensee will pay to the City on or before December 31, 2017, the non-refundable amount of \$28,627 as payment ("Settlement Payment") in full for its, its predecessor entities', including MCI Telecommunications Corp., and Verizon Business Network Services Inc.'s use of the Rights-of-Way to the extent each such entity owned any of the Facilities at the Facilities Location depicted on Exhibit B, up to and including December 31, 2017. Licensee's agreement to make this payment and City's agreement to accept this payment to settle the Dispute shall not constitute or be considered an admission of liability or wrongdoing (including, without limitation, noncompliance with permitting requirements), or an agreement as to the validity of any

of the positions advanced by the other regarding the Dispute. Each Party agrees, on behalf of itself and its past, present, and future employees, officers, directors, attorneys, shareholders, representatives, predecessors, successors, permitted assigns, subsidiaries, parents, and partners absolutely, unconditionally, completely, and without reservation, to release, acquit, irrevocably remise, and forever discharge the other Party and its respective past, present, and future employees, officers, directors, attorneys, shareholders, representatives, predecessors, successors, permitted assigns, parents, and partners of and from any and all manner of claims, counterclaims, costs, expenses, demands, rights, liabilities, damages, potential actions, causes of action, suits, judgments, decrees, retroactive adjustments or refunds, interest, late payment charges, fines, bonds, bills, and controversies of any kind and nature whatsoever, at law, in equity, or otherwise including, without limitation, claims based on specific or punitive damages, whether known or unknown, arising from the Dispute, provided nothing herein shall be deemed to release any claim to enforce this Agreement, and any other lawful obligation of Licensee to City or City to Licensee not released herein, including but not limited to such obligations of taxes or regulatory compliance to City as a governmental entity. The Parties acknowledge and agree that, although they may hereafter discover law or facts in addition to or different from those which they know or believe to be true as of the Effective Date related to the Dispute, it is their intention with respect to each other, to settle and release the Dispute fully, finally, and forever; and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts or law. The Parties may have other disputes between them, known or unknown, that are not settled or released herein. Nothing in this Agreement binds or can bind any entity other than those named above, except as to any predecessor or affiliated entities pursuant to which the Dispute has arisen. Each Party warrants and represents that it has not assigned, transferred, or conveyed all or any portion of the claims covered by this Agreement and that this warranty and representation is an essential and material term of this Agreement, without which it would not have entered into it.

SECTION 4. TAXES

4.1 The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing herein is intended to alter, amend, modify or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law, with the exception of the Use Fee set forth in this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed,

kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee's installed Facilities for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

6.1 In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code of Ordinances, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if the Licensee loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Insurance. In addition to the requirements of Section 90.283(d) of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,727,489.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the

insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. **The insurance requirements in this section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.**

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.** Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the ROW, equipment within the ROW or otherwise by Licensee's use of the ROW.

7.4 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees, in the event that Licensee is determined judicially to have violated the terms of this Agreement.

7.5 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.6 Relocation or Removal of Facilities.

7.6.1 In addition to the requirements of Section 90.283 of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.6.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate its Facilities as may be reasonably necessary for permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least 14 days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within 7 days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable

to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.7 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent interest per month until paid.

SECTION 9. NOTICE

9.1 Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

MCI Communications Services, Inc.

600 Hidden Ridge Drive, #E02E97
Irving, TX 75038

If Notice to City:

City of Ladue, Missouri
Attn: Director of Public Works
9345 Clayton Rd.
Ladue, MO 63124

9.2 If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF LADUE, MISSOURI

Nancy Spewak, Mayor

Date: _____

ATTEST:

Laura Rider, City Clerk

MCI COMMUNICATIONS SERVICES, INC.

By: _____

Print Name: Robert F. McGee

Title: Exec Director Network Engineering

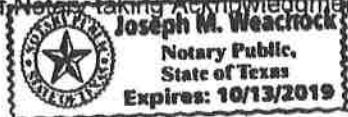
Date: 11/14/17

(CORPORATE SEAL)

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

The forgoing instrument was acknowledged before me this November 14, 2017, by ROBERT F. MCGEE, on behalf of MCI Communications Services, Inc. This person is personally known to me or has produced TX DL as identification.

Notary Public, State of TEXAS

Joseph M. Weachock JOSEPH M. WEACHOCK
(Signature of Notary taking Acknowledgment)


My Commission Expires: _____

EXHIBIT A

SPECIAL CONDITIONS APPLICABLE TO COMMUNICATION COMPANIES

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. all new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including when and where similar facilities exist above ground or when conditions are such that underground construction is impossible, impracticable or economically unfeasible, as determined by the City, and where in the City's reasonable judgment the aboveground construction has minimal aesthetic impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City
2. Licensee acknowledges and agrees that pursuant to its obligation to pay all legally applicable taxes it shall pay the City's license tax as a ROW user and asserting its status as selling telephone services, and shall remit to the City such tax on gross receipts of all of its revenue from its services authorized herein or otherwise as required by Article II of Chapter 106 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the right-of-way permit application or otherwise to the City) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.
4. For purposes of clarification only, a document providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided it otherwise complies with the requirements of this Agreement and meets the following conditions:
 - Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own, control, maintain, modify, physical access, or revise the facilities in the ROW, whether specific facilities or not; and
 - Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

EXHIBIT B—Location of Facilities

Facilities Location shown with pink/purple line



Exhibit C

XO Communications Services, LLC ROW Use Agreement

RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES

THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, XO Communications Services, LLC, a Delaware limited liability company registered to do business in Missouri (the "Licensee"), and the City of Ladue, Missouri, a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

WHEREAS, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

WHEREAS, Missouri law provides conditions relating to the City's consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way ("Rights-of-Way" or "ROW") for placement of various communications facilities; and

WHEREAS, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

WHEREAS, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

WHEREAS, the City and Licensee also desire to compromise, resolve, and settle their dispute over compensation that the City claims to be due, applicability of any prior agreements or authorization, and any credits Licensee claims for past use of the City Rights-of-Way by Licensee and its predecessor entities (the "Dispute"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 90, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Service," as such terms are now, or may in the future, be defined under applicable law,

and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreements Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the ROW.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service** within the City, subject, however, to the terms and conditions herein set forth within this Agreement and the Code and all such special conditions as may be set forth in Exhibit A. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Facilities are subject to prior City approval and consent. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other

than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

2.5 No Interference. Licensee shall construct and maintain its Facilities to be so located, constructed and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation and Collocation Requirements. Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in section 7.6, below.

SECTION 3. TERM, COMPENSATION, AND SETTLEMENT

3.1 Term. This Agreement shall be effective for a term of ten (10) years from the Effective Date, and shall continue from year to year thereafter, unless terminated by either party with ninety (90) days prior written notice to the other of an intent to terminate this Agreement following the Initial Term, provided in no circumstance shall this Agreement be effective for longer than twenty (20) years and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

3.2 Compensation – User Fees. Licensee agrees to pay the City a linear foot user fee and such other compensation in the amount and under such additional regulations and provisions as are set forth in this Agreement and in the City's policies and Ladue Code. Unless otherwise hereinafter established by the City's Governing Body, Licensee shall pay to the City an annual fee of one dollar and ninety cents (\$1.90) per linear foot of Facilities located in the Rights-of-Way, or portion thereof, on an annual basis with a minimum fee of \$4,000 per year, or as otherwise established by the City Council from

time to time. Licensee shall be entitled to a credit pursuant to Section 67.1846 RSMo. against the user fees due hereunder equal to the payment(s) from Licensee for the same time period for the business license or gross receipts tax paid by Licensee to City; provided, however, in no case shall such credit exceed the amount of the user fee due and may not be carried forward or back to any other time period and the credit shall only be applied to the specified period as authorized in Section 3.5 below. The actual authorized installation authorized by this Agreement shall be limited to that which has received approved permits from the City and linear foot fees shall be paid based on the sum of the actual linear foot of facilities installed and any additional linear foot approved by permit for installation. No credit shall apply to any taxes paid under protest.

3.3 Timing of Payment of User Fees. Payment shall be due and payable on an annual basis in advance prior to commencement of each permitted installation and no later than issuance of an excavation or rights-of-way permit, with the annual payment prorated to the following March 1, and thereafter on or before March 1 of each subsequent year for the following calendar year. No portion of any user fee shall be subject to refund due to abandonment or removal of the facilities during a prepaid period.

3.4 Interest on Late Payments and Under Payments. If any user fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment due and on any unpaid balance shall accrue from the due date until received, at the rate of nine (9) percent of the total amount past due or at such other rate as may be required by law.

3.5 Fee Statement; Retroactive Adjustments. Licensee shall provide with each user fee payment a statement showing the manner in which the rights-of-way user fee was calculated. If any fee statement is determined to understate the fees owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided in Section 3.4, above. No later than February 15 of each year, Licensee shall submit to the City a verified statement certifying the total linear feet occupied in the Rights-of-Way during the prior calendar year and the location of each segment(s). If Licensee seeks a credit for gross receipts taxes pursuant to Section 3.2 above paid to the City during the prior calendar year, it shall also include in such verified statement and for such prior calendar year: (1) all gross revenues received subject to the tax to be credited, (2) total amount of such tax paid to the City, and (3) the dates of each tax payment, and check numbers or other documentation sufficient for the City to verify its receipt of all such payments. Such credit may only be applied to the next annual user fee payment provided such credit and calculation is shown on the statement accompanying the payment. The City retains the right to disallow any credit or portion thereof if the City determines the credit is not documented or otherwise authorized.

3.6 User Fee Not a Tax. The above required user fees and other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Code, herein, and as set forth in § 67.1846. Licensee acknowledges that the user fees are compensation for use of the Rights-of-Way, both underground and above ground, and shall in no way be deemed a tax of any kind.

3.7 Linear Feet of Facilities. Licensee states that it currently has 18,031 linear feet of Facilities in City Rights-of-Way as depicted on Exhibit B attached hereto and incorporated. Licensee does not currently propose installation of additional Facilities within the City ROW.

3.8 Settlement Payment and Release For Past Right-of-Way User Fees. Licensee will pay to the City on or before December 31, 2017, the non-refundable amount of \$254,040 as payment ("Settlement Payment") in full for its and its predecessor entities' use of the Rights-of-Way up to and including December 31, 2017. Licensee's agreement to make this payment and City's agreement to accept this payment to settle the Dispute shall not constitute or be considered an admission of liability or wrongdoing (including, without limitation, noncompliance with permitting requirements), or an agreement as to the validity of any of the positions advanced by the other regarding the Dispute. Each Party agrees, on behalf of itself and its past, present, and future employees, officers, directors, attorneys, shareholders,

representatives, predecessors, successors, permitted assigns, subsidiaries, parents, and partners absolutely, unconditionally, completely, and without reservation, to release, acquit, irrevocably remise, and forever discharge the other Party and its respective past, present, and future employees, officers, directors, attorneys, shareholders, representatives, predecessors, successors, permitted assigns, parents, and partners of and from any and all manner of claims, counterclaims, costs, expenses, demands, rights, liabilities, damages, potential actions causes of action, suits, judgments, decrees, retroactive adjustments or refunds, interest, late payment charges, fines, bonds, bills, and controversies of any kind and nature whatsoever, at law, in equity, or otherwise including, without limitation, claims based on specific or punitive damages, whether known or unknown, arising from the Dispute, provided nothing herein shall be deemed to release any claim to enforce this Agreement, and any other lawful obligation of Licensee to City or City to Licensee not released herein, including but not limited to such obligations of taxes or regulatory compliance to City as a governmental entity. The Parties acknowledge and agree that, although they may hereafter discover law or facts in addition to or different from those which they know or believe to be true as of the Effective Date related to the Dispute, it is their intention with respect to each other, to settle and release the Dispute fully, finally, and forever; and, in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts or law. The Parties may have other disputes between them, known or unknown, that are not settled or released herein. Nothing in this Agreement binds or can bind any entity other than those named above, except as to any predecessor entities pursuant to which the Dispute has arisen. Each Party warrants and represents that it has not assigned, transferred, or conveyed all or any portion of the claims covered by this Agreement and that this warranty and representation is an essential and material term of this Agreement, without which it would not have entered into it.

SECTION 4. TAXES

4.1 The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing herein is intended to alter, amend, modify or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law, with the exception of the Use Fee set forth in this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee's installed Facilities for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

6.1 In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code of Ordinances, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if the Licensee loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Insurance. In addition to the requirements of Section 90.283(d) of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$2,727,489.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. Any self-insurance or deductible above fifty thousand

dollars (\$50,000.00) must be declared to and pre-approved by the City. **The insurance requirements in this section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.**

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted.** Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the ROW, equipment within the ROW or otherwise by Licensee's use of the ROW.

7.4 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees, in the event that Licensee is determined judicially to have violated the terms of this Agreement.

7.5 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.6 Relocation or Removal of Facilities.

7.6.1 In addition to the requirements of Section 90.283 of the ROW Code, the City may in its exercise of the public interest request, require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.6.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate its Facilities as may be reasonably necessary for permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least 14 days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within 7 days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of

Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.7 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INDEMNIFICATION

8.1 Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent interest per month until paid.

SECTION 9. NOTICE

9.1 Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

XO Communications Services, LLC
600 Hidden Ridge Drive, #E02E97
Irving, TX 75038

If Notice to City:

City of Ladue, Missouri
Attn: Director of Public Works
9345 Clayton Rd.
Ladue, MO 63124

9.2 If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

SECTION 10. MISCELLANEOUS

10.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

10.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

10.3 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

10.4 The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

10.5 This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

11.1 This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF LADUE, MISSOURI

Nancy Spewak, Mayor

Date: _____

ATTEST:

Laura Rider, City Clerk

XO COMMUNICATIONS SERVICES, LLC

By: _____

Print Name: Robert F. McGeer

Title: Exec Director Network Engineering

Date: 11/14/17

(CORPORATE SEAL)

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

The forgoing instrument was acknowledged before me this NOVEMBER 14, 2017, by ROBERT MC GEE, on behalf of XO Communications Services, LLC. This person is personally known to me or has produced TX DL as identification.

Joseph M. Weachock
(Signature of Notary taking Acknowledgment)

JOSEPH M. WEACHOCK

Notary Public, State of TEXAS

My Commission Expires: 10/13/2019

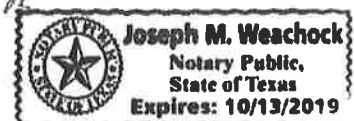


EXHIBIT A

SPECIAL CONDITIONS APPLICABLE TO COMMUNICATION COMPANIES

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. all new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including when and where similar facilities exist above ground or when conditions are such that underground construction is impossible, impracticable or economically unfeasible, as determined by the City, and where in the City's reasonable judgment the aboveground construction has minimal aesthetic impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City
2. Licensee acknowledges and agrees that pursuant to its obligation to pay all legally applicable taxes it shall pay the City's license tax as a ROW user and asserting its status as selling telephone services, and shall remit to the City such tax on gross receipts of all of its revenue from its services authorized herein or otherwise as required by Article II of Chapter 106 of the City's Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the right-of-way permit application or otherwise to the City) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.
4. For purposes of clarification only, a document providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided it otherwise complies with the requirements of this Agreement and meets the following conditions:
 - Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own, control, maintain, modify, physical access, or revise the facilities in the ROW, whether specific facilities or not; and
 - Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

EXHIBIT B



RESOLUTION NO. 2017-31

A RESOLUTION AMENDING THE CITY OF LADUE PERSONNEL ADMINISTRATION MANUAL "SUBJECT – ORGANIZATION FOR PERSONNEL MANAGEMENT" BY REPLACING THE EXISTING ORGANIZATIONAL CHART WITH AN UPDATED ORGANIZATIONAL CHART.

WHEREAS, the City of Ladue previously adopted a Personnel Administration Manual; and

WHEREAS, from time to time the policies, procedures and guidelines contained in the manual may be amended or rescinded, or new policies, procedures and guidelines may be added; and

WHEREAS, it has not been documented on the existing chart that the Finance Department is operating as a stand-alone department; and

WHEREAS, it is important to document the chain of command within each department; and

WHEREAS, staff has recommended that the organizational chart contained in the manual be updated to reflect the current organizational structure of City departments; and

WHEREAS, the City Council now desires and finds it in the best interest of the City to adopt an updated organizational chart.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby adopts an updated Organizational Chart, in substantially the form of Exhibit A.

Section 2. This Resolution shall take effect and be in force from and after its passage and approval by the Mayor.

Adopted by the City Council and approved by the Mayor on this 20th day of November, 2017.

Nancy Spewak, Mayor

ATTEST:

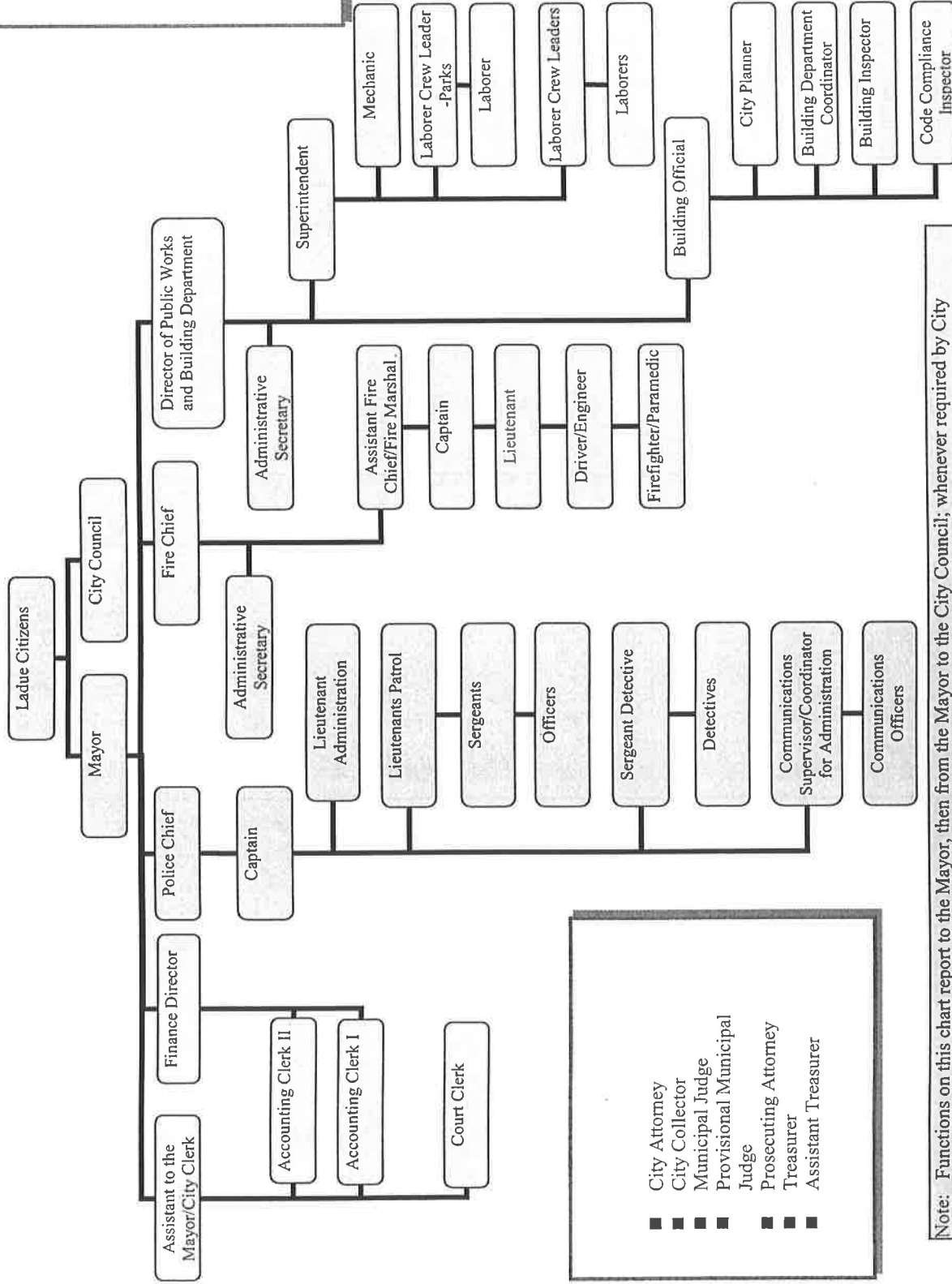
Laura Rider, City Clerk

Exhibit A
Organizational Chart

City of Ladue

Committees/Boards

Architectural Review Board
Board of Fire & Police Commissioners
Board of Trustees, Firemen & Policemen Pension Fund
Finance, Revenue & Taxation Committee
Insurance Committee
Public Works Committee
Retirement Comm., Non-Uniform Retirement Fund
Storm Water Advisory Comm.
Zoning Board of Adjustment
Zoning & Planning Commission



- City Attorney
- City Collector
- Municipal Judge
- Provisional Municipal Judge
- Prosecuting Attorney
- Treasurer
- Assistant Treasurer

Note: Functions on this chart report to the Mayor, then from the Mayor to the City Council, whenever required by City Ordinances.